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PERMANENT COURT OF ARBITRATION
AT THE HAGUE

UNITED STATES-NORWAY ARBITRATION

UNDER THE

SPECIAL AGREEMENT OF JUNE 30, 1921

ARGUMENT OF THE UNITED STATES

JUNE 22, 1922

WASHINGTON
GOVERNMENT PRINTING OFFICE
1922

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THE ARGUMENT OF THE UNITED STATES.

A. THE TERMS OF SUBMISSION.

I. Introduction.

Article I of the Special Agreement provides that "the Tribunal shall examine and decide the aforesaid claims in accordance with the principles of law and equity." The Case of the United States reviewed the diplomatic correspondence leading up to the adoption of this phrase, and drew the conclusion that this language completely negatived "any suggestion (which, it is submitted, would in view of the accepted principles have been in any event untenable) that the Tribunal should fail to give effect to the municipal law of the United States regarding any matters within the jurisdiction of the United States which come before the Tribunal for its decision." The Norwegian Counter-case takes issue with this conclusion in the following language:

"The suggestion that the Tribunal will give effect to the municipal law of the United States regarding any matters within the jurisdiction of the United States which come before the Tribunal for its decision is, we submit, not consistent with the correct interpretation of the phrase 'principles of law and equity.'"[1]

The Norwegian Counter-case then lays down this proposition:

"It is our understanding of international arbitral law that, in the absence of an express agreement to the contrary, arbitration of differences between nations is governed by international law and that an arbitral tribunal is not bound by the municipal law of any of the States which are parties to the arbitration."[2]

In support of this latter proposition, the Norwegian Counter-case proceeds to cite authorities to the following effect. First, it seeks to establish by the authority of Dr. Lammasch[3] and Dr. James Brown Scott[4] that in the absence of anything to the contrary in the terms of submission international law is the law of an international tribunal. It further seeks to establish by quotation from Dr.

[1] Norwegian Counter-case, page 3.
[2] Norwegian Counter-case, pages 3–4.
[3] Norwegian Counter-case, pages 4–5.
[4] Norwegian Counter-case, page 5.

Lammasch,[1] from the argument of the United States in the Orinoco Steamship Company case,[2] from the report of the majority of the Senate Committee on Foreign Relations in regard to the so-called "Taft treaties" of 1911,[3] and from a magazine article written by the Agent of the United States in the present arbitration,[4] that as a general principle the word "equity" in an arbitral agreement, unless between Anglo Saxon countries, should not be deemed to refer to the technical equity jurisprudence of English and American law.[5]

It is not questioned by the United States that, subject to any applicable treaty provisions including naturally the terms of the

---

[1] Norwegian Counter-case, page 5.

There are certain statements from Dr. Lammasch's work "Die Rechtskraft Internationaler Schiedsspruche," quoted in the Norwegian Counter-case, which, if standing alone and not read with reference to controlling principles and in connection with other passages in Dr. Lammasch's work with which they are cross referenced, might be thought to contravene the position of the United States above stated. These passages will be referred to later on. See *infra*, page 10–12. It is not believed that they could have been intended by their learned author to deny the position taken by the United States, which as will be shown has been repeatedly affirmed by international tribunals, and which is notably illustrated in Secretary Bayard's opinion setting aside an international award in favor of an American citizen in the Pelletier case,—an opinion which Dr. Lammasch discusses at length with complete understanding and approval.

[2] Norwegian Counter-case, page 6.

[3] Norwegian Counter-case, page 7.

[4] Norwegian Counter-case, page 8.

[5] It is further cheerfully conceded that the Norwegian Counter-case successfully establishes by quotation from another magazine article that neither the expressions "justice and equity" or "law and equity" or "law or equity" in the terms of an arbitral *compromis* permit the arbitral tribunal to exercise a "vague and unlimited jurisdiction" (Norwegian Counter-case, page 8,) but that these expressions have acquired by user in international law a meaning comparable to that denoted by "due process of law" in the constitutional law of the United States, and that they refer to "the principles of justice as administered in courts of law acknowledged by the parties to the agreement." It is hoped, however, that it will not be necessary to argue this principle in the present arbitration. If, however, the Norwegian Counter-case, in arguing that the tribunal, failing any rule of international law, is at liberty "to supply the lack of applying principles in harmony with the spirit of international law," (Norwegian Counter-case, page 6) and by speaking of the "general principles of justice" "as distinguished from any particular system of jurisprudence or the municipal law of any state," (Norwegian Counter-case, page 10,) is intending to argue that the terms of the present submission authorize the tribunal to exercise an "unrestricted liberty of decision within the purview of its own conscience," (American Journal of International Law quoted Norwegian Counter-case page 9), then indeed the foregoing quotations of the Norwegian Counter-case are highly relevant, albeit opposed to the Norwegian contention.

Furthermore, as a matter of critical accuracy, it is respectfully submitted that the conclusion on page 10 of the Norwegian Counter-case, "It appears that the majority of the Foreign Relations Committee of the United States Senate, Senator Knox and Mr. Dennis are all in agreement that the words 'principles of law and equity' are to be understood to mean general principles of justice as distinguished from any particular system of jurisprudence or the municipal law of any state," is not wholly borne out by the quotations by which it is preceded. The Senate Committee on Foreign Affairs was apparently arguing that that equity conferred "a vague and unlimited jurisdiction," and the other gentlemen cited were arguing just the contrary; neither were discussing any question before this Tribunal; but inasmuch as the question before this honorable Tribunal is not as to the interpretation of certain speeches and magazine articles, made in 1911, but as to the meaning of the terms of submission in this case, it seems useless to pursue this argument.

particular reference, an arbitral tribunal is to be guided by international law whenever there is any generally recognized rule of international law affecting the particular question before it. Neither is it claimed that "equity" in the expression "according to the principles of law and equity," in the present terms of submission, between the United States and Norway, refers to the technical rules of equity of Anglo Saxon jurisprudence. The position of the United States which is challenged by Norway, namely, that this honorable Tribunal should give effect "to the municipal law of the United States regarding any matters within the jurisdiction of the United States which come before the Tribunal for its decision," rests upon two propositions, to which the Norwegian Counter-case entirely fails to address itself. These propositions are as follows:

(1) It is a fundamental general principle of international law that matters transpiring within the jurisdiction of a particular State are governed by the municipal law of that State, which is incorporated *pro tanto* into the body of international law and will be applied in a proper case by an international tribunal governed by international law unless this general rule is changed by special provisions contained in the convention establishing the international tribunal.

(2) The terms of the special agreement of June 30, 1921, establishing this honorable Tribunal, particularly when construed in the light of the diplomatic discussion leading up to its adoption, work no change in the general rule, but on the contrary reaffirm and strengthen it.

These propositions will be discussed in their order.

II. International Law Incorporates the Municipal Law of the Jurisdiction.

a. The absolute character of the municipal jurisdiction of a nation within its own territory under the principles of international law was well stated by Chief Justice Marshall in one of his most famous international law cases, *The Schooner "Exchange,"* when he said:

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its own sovereignty

to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restrictions."[1]

b. The Pelletier Case.

That this statement of the rule of international law, strong as it is, is not one whit too strong, is brought out clearly by the action of the United States in refusing to take advantage of a mistaken judgment of an international tribunal in favor of an American citizen in the *Pelletier* case. This well known case will be approached through the medium of an analysis by Dr. Lammasch which appears in his book, "Die Rechtskraft Internationaler Schiedsspruche," and which is cross-referenced to the sections of the same work from which quotation is made in the Norwegian Counter-case.

Dr. Lammasch's statement of this case is as follows:

"The Pelletier case and the award of Barge in the case of the Orinoco Steamship Company are cases in which there actually existed an unmistakable misapprehension of the *compromis* by the arbitrator.

"Pelletier, a Frenchman naturalized in the United States of America, was arrested in 1861 on a charge of attempted slave trading (the transportation of slaves to the then still slave holding state of Louisiana), on account of the highly suspicious conduct of the bark *William*, of which he was the master, in Haitian waters. He was sentenced to death by the Haitian Court of First Instance, but the Court of Cassation commuted the sentence to the comparatively mild punishment of imprisonment for five years.

"After about a year and a half he managed to escape from jail. He then claimed that his arrest in Haiti was unlawful and that his treatment during the investigation and imprisonment was unnecessarily cruel. The two governments agreed to appoint the former American Federal Supreme Court Justice, William Strong, as sole arbitrator. The latter decided in 1885 in favor of Pelletier on purely technical and formal grounds, and awarded him damages in the sum of $75,250. In his very elaborate opinion, Strong said expressly that in his opinion 'had the bark been captured and brought into an American port she would have been condemned by the United States courts as an intended slaver.'[2]

"He assumed, however, that the authorities of Haiti had no right to try Pelletier on the acts charged against him; because they took place on board the *William*, a ship carrying an American register, and offenses on board a foreign ship even though in territorial waters do not come under the jurisdiction of the state bordering the sea.[3] The vessel should have been brought to an American port and there Pelletier could and should have been sentenced.

---

[1] 7 Cranch, 116.

[2] Moore, International Arbitrations, Vol. II, p. 1765.—Author's note.

[3] Moore, International Arbitrations, Vol. II, p. 1773.—Author's note.

"Only in case the offense was against the peace of the land or if it involved 'piracy recognized as such by law of nations,' was the court of the port competent.[1]

"Besides slave trading is under the law of Haiti regarded as piracy, but that is not sufficient in order to give jurisdiction to the court of that state, since under international law, 'by the law of nations,' it is not piracy. Under Article 4 of the *compromis*, however, the arbitrator was bound to decide 'according to the rules of international law existing at the time of the transactions complained of.'[2]

"Soon after Strong had handed down his decision, and before it was carried out, the counsel for Haiti approached him with a request for a rehearing of the case on account of newly discovered evidence. As he was *functus officio*, Strong very properly denied that request.

"On the strength of a resolution introduced in the Senate, the award was then referred to Secretary of State Bayard for his opinion, and he, on January 18, 1887, submitted a report according to which the United States should refrain from carrying out the award, that is to say, from demanding the payment of the indemnity to Pelletier. In that well digested, memorable report, Bayard expounds the idea that the *compromis* did not, by directing the arbitrator to decide according to the rules of international law, limit him to deciding whether Pelletier's act was 'piracy according to the law of nations,' or merely piracy according to the national law of Haiti, but placed him under the obligation *to*[3] *decide the case in its entirety according to the principles of international law. The question was not whether Pelletier's act was piracy under the law of nations, but whether Haiti by the law of nations had the right to prosecute and punish any one who had laid himself open to a charge of slave trading within her territorial waters. This question, however, must, without doubt, be answered in the affirmative.*[4]

"On those grounds Bayard came to the conclusion that it was the duty of the executive to refrain from carrying out an award wrongfully rendered to the advantage of an American citizen."[5]

c. This case is so exactly in point that it is thought proper to supplement Dr. Lammasch's excellent statement with a quotation from Secretary Bayard's own language. In the course of his opinion, to which Dr. Lammasch refers, Secretary Bayard said:

"The protocol, it would seem, did not restrict the learned arbitrator to the consideration of the question whether Pelletier was guilty of piracy as defined in the law of nations. It merely provided that

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[1] Moore, same work, Vol. II, 1775. It is clear that he then had in his mind the order of the French Council of State of 1806. But that very order acknowledges that "a neutral vessel admitted into a port of the state is in accordance with law under the police regulations and laws which govern at the place where it is received; the men of the crew are also amenable to the courts of the country for offenses committed by them, even on board the ship, *against persons that do not belong to the crew.*" Compare Terels, International Public Maritime Law, second edition, 1903, page 62, *et seq.* Author's note.

[2] Notes 2 and 3: 2. Moore, I. A.. II, 1750; 3. As to the reference concerning the law in force at the time of the act, see supra. Chapter I, paragraph 8. Author's note.

[3] *Agent's note:* Italics ours.

[4] Moore, Vol. II, 1796. Author's note.

[5] Moore, Vol. II, page 1800. See also J. W. Foster, "What the United States has Done for International Arbitration," page 18, concerning this and the Lazare case. Author's note.

his claim should be decided 'according to the rules of international law existing at the time of the transactions complained of.' This, it is conceived, did not mean that the arbitrator was to be restricted to the decision of the question whether Pelletier was guilty of the offences of which he was convicted, as defined by international law, but only that in deciding the question of his trial and imprisonment, and of the condemnation of his vessel, the arbitrator was to accord to Pelletier the rights to which in 1861 he was by international law entitled, and to determine whether any of those rights were violated by Haiti.

"If, as I believe, this construction of the protocol is correct, it is not seen that the learned arbitrator was precluded from inquiring whether Pelletier was guilty of piracy by Haitian law, and properly convicted of that offence by the Haitian court. *It was a rule of international law in 1861, and is a rule of that law now, that offences committed in the territorial jurisdiction of a nation may be tried and punished there, according to the definitions and penalties of its municipal law, which becomes for the particular purpose the international law of the case.* It matters not what the offence may be termed, if it appear that a violation of the municipal law was committed and punished.

* * * * * * *

"I can not presume that the Government of the United States by stipulating for the decision of the Pelletier claim according to the rules of international law existing in 1861 intended to deny to Haiti the right at that time to execute within her territorial jurisdiction her laws against slave trading or piracy therein attempted * * *.

"The duty of the Executive to refuse to enforce an award which, notwithstanding the unimpeachable character, as in the present case, of the arbitrator, turns out to have been inequitable or unconscionable, has been maintained in repeated rulings of this Department, and is sanctioned by the Supreme Court of the United States."[1]

In accordance with Secretary Bayard's findings, the United States forbore to insist upon the payment by Haiti of the sum awarded the claimant by the umpire. It is respectfully submitted that there could hardly be a more persuasive authority upon the point in question. Here we have the Government of the United States declining to enforce an arbitral award rendered by an arbitrator of the highest character, who had been a Justice of the Supreme Court of the United States, in favor of an American citizen, because that arbitrator had mistakenly disregarded the terms of submission by which he was bound in this: that he had construed a protocol, requiring him to decide "according to the rules of international law existing at the time of the transactions complained of," as re-

[1] Senate Ex. Doc. No. 64, 49th Congress, 2nd Session, pages 16–17. See also, Moore, International Arbitrations, vol. 2, pages 1794–1800. Italics ours.

quiring him to refuse to apply the municipal law of Haiti to a transaction within its jurisdiction. In the Pelletier case the Government of the United States, against its own interest, refused to call upon the Government of Haiti to comply with an arbitral award because the arbitrator had done precisely what the Norwegian Counter-case asks this honorable Tribunal to do, namely, to disregard the municipal law of one of the countries participating in the arbitration with respect to a transaction occurring within its jurisdiction.

d. Other Cases.

1. The rule laid down by Secretary Bayard in the Pelletier case has been repeatedly followed by arbitral tribunals. On page 8 of the Norwegian Counter-case, reference is made through the medium of a quoted footnote to the Pecuniary Claims Convention between the United States and Great Britain, signed August 18, 1910. The reference is not a happy one for Norway. By the terms of this convention, which is still in process of execution, sessions of the tribunal having been only temporarily suspended, it is the duty of the members of the tribunal upon assuming their functions to take oath to decide "in accordance with treaty rights and with the principles of international law and of equity."[1]

In four of the twenty-one awards made by this tribunal, it has had occasion to consider the place of municipal law in international law. In each case effect has been given to the fundamental principle of international law that matters transpiring within the jurisdiction of a particular state are governed by the municipal law of that state. A typical case is the *Sidra*,[2] in which a decision was rendered so recently as November 29, 1921.

This was a claim presented by Great Britain for damages to the British merchant ship *Sidra* resulting from a collision between the *Sidra* and the United States Government tug boat *Potomac* in the Patapsco River near Baltimore, on October 31, 1905. The Tribunal found both vessels responsible for the collision. The *Potomac* was undamaged.

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[1] Charles, Treaties, Conventions, International Acts, Protocols, and Agreements, Vol. 3, p. 50 at 52.

[2] For text of the award, see American Journal of International Law, Vol. XVI, pages 1-14.

Concerning the law applicable the court said:

"According to the well settled rule of international law, the collision having occurred in the territorial waters of the United States the law applicable to the liability is the law of the United States, according to which when both ships are to blame the damage suffered by each of them must be supported by moiety by the other."[1]

Applying this rule the Tribunal awarded upwards of £2,000 as damages.

In a similar case, the *Canadienne*, decided May 1, 1914, where a collision occurred in Canadian waters, the Tribunal applied Canadian law.[2]

In the *Cadenhead Case*, decided May 1, 1914, which related to an accidental shooting in American territory, the Tribunal applied the law of the United States.[3]

And finally, in the matter of the *Argonaut* and *Colonel Jonas H. French*, decided December 2, 1921, which involved the question of fishing within the territorial waters of Prince Edward Island, the Tribunal once more applied the local British statute.[4]

So much for cases arising under the British American Claims Convention, one of the most recent claims conventions of the United States.

2. By Article IV of the Claims Convention between the United States and Mexico, of 1839, the claims were to be decided, "according to the principles of justice, the law of nations, and the stipulations of the treaty of amity and commerce between the United States and Mexico of the 5th of April, 1831."

In the *Baldwin* case, which came before this commission, the umpire in an interlocutory report stated that the facts had not been sufficiently established to enable him to render a final judgment. Referring to various matters of proof and to the subject of damages, he said:

"The American commissioners allow Mr. Baldwin $12,000 as compensation for the loss of his time, the interruption of his business, etc., etc., as well as $3,000 as damages for his imprisonment and the outrages inflicted on his person and his dignity, and, in the last

[1] American Journal of International Law, Vol. XVI, page 110 at 113.

[2] For text of the award, see American Journal of International Law, Vol. VIII, pages 655–659.

[3] For text of the award, see American Journal of International Law, Vol. VIII, pages 663–665.

[4] For text of the award, see American Journal of International Law, Vol. XVI, pages 106–110.

place, $3,557.25 as compensation for profits which he lost, in their opinion, in consequence of the seizure of his effects. In order to decide on those points, it is important to learn what are the principles of Mexican law relative to damages due for torts against the person or against the property of another. It is less important to know what is the opinion on this subject of one or another Mexican jurisconsult, than to ascertain what rules are observed in that regard by the Mexican courts of justice and especially by the supreme courts. The result of that examination will serve as a guide for the decision of the claim of Mr. Baldwin touching the damages and prejudices suffered by him. It will then be necessary to prove all the facts on which, according to the principles of Mexican law (in so far as they do not infringe the general principles recognized in the law of nations), depends the question of the amount of damages, whether for the attacks on his liberty or for the seizure of his effects.

"As to the gain of which Mr. Baldwin states that he was deprived by the seizure of his effects, it will be necessary especially to examine whether, according to the principles of Mexican law, damages in respect of a profit of which the injured individual has been deprived comprise only that which follows the injury directly and immediately."[1]

3. Similar decisions have been repeatedly made by other arbitral tribunals. Further citation of authorities on this point will be left to a foot-note. It is believed that they are well-nigh unanimous, bearing in mind the variations in the terms of the *compromis* under which the various cases were submitted.[2]

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[1] Moore, International Arbitrations, Vol. 3, 2863–2864.

[2] See opinion of the United States and British Claims Commission of 1853 in the case of William Cook and others, in which the control of local legislation over questions of heirship and succession is recognized, the *compromis* of 1853 requiring the commissioners to decide claims presended to them "to the best of their judgment, and according to justice and equity, without fear, favor, or affection to their own country." (Report of Decisions, United States and British Claims Commission, 1853, page 166 at 169; Malloy's Treaties, Vol. I, page 664 at 665); Opinion of the United States-Venezuela Claims Commission of 1867–8 in the case of the "Horatio," in which effect is given to a Venezuelan law prohibiting soundings within certain bounds, the *compromis* of April 25, 1866, requiring the commissioners to decide claims submitted to them "according to justice, and in compliance with the provisions of this convention." (Moore's Digest of International Arbitrations, Vol. III, page 3021 et seq; Malloy's Treaties, Vol. II, page 1856); Opinion of Dr. Lieber, Umpire, in the case of A. H. Halstead v. Mexico under the claims convention between the United States and Mexico of July 4, 1868 in which effect is given to a Mexican law forbidding foreigners to enter or travel in Mexico without passports, the *compromis* requiring the commissioners to decide "to the best of their judgment, and according to public law, justice, and equity, without fear, favor, or affection to their own country." (Moore's Digest of International Arbitrations Vol. IV, page 3243 at 3244; Malloy's Treaties Vol. I, page 1129.); Report of the case of John W. Atwood v. Mexico, under the same convention, in which effect is given to a Mexican law forbidding the exportation of mares. (Moore's Digest of International Arbitrations, Vol. IV, page 3249); Opinion of the Delagoa Bay Railway Arbitration before the Special Tribunal at Berne in 1900 under the protocol of June 13, 1891 between Great Britain, Portugal and the United States, in which the court applied the law of Portugal in determining the amount of compensation due the claimants on account of the recission of the concession of the Lourenco Marquez Railroad, and of the taking of possession of that railroad by the Portuguese Government, the *compromis* requiring the tribunal to fix this compensation "as it shall deem most just." (Archives Diplomatiques 1900, Vol. 74, page 171 at 299; Moore's Digest of International Arbitrations, Vol. II, page 1874); Opinion of Duffield,

e. Dr. Lammasch's Statements.

In the light of these authorities and particularly in the light of Dr. Lammasch's own careful and commendatory analysis of the *Pelletier* case, it is submitted that certain passages from his work, "Die Rechtskraft Internationaler Schiedsspruche," which have been quoted in the Norwegian Counter-case, and which he himself took the precaution to cross-reference with his discussion of the *Pelletier* case, assume a somewhat different aspect from that which they might bear on casual reading.

1. For instance, the Norwegian Counter-case quotes Dr. Lammasch as saying:

"In these conditions the rules of municipal law of a state may under no circumstances be used as a basis for an award, in case the laws of the other state do not agree with it. But even if there were such an agreement, this could not be done without more, because it is quite possible that law between sovereign states must be ordered differently than law between persons who are subject to one and the same authority. Many *compromis*, therefore, expressly prohibit consideration of national legislation."[1]

But it is submitted that Dr. Lammasch in this passage is clearly speaking of a case where sovereignty stands against sovereignty, where each of the two litigating nations is primarily and directly

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Umpire, in the Valentiner case before the German-Venezuelan Mixed Claims Commission of 1903, in which effect is given to the provisions of the constitution of Venezuela in determining the validity of a conscription of men for military service, the *compromis* of May 7, 1903 between Germany and Venezuela stipulating that "the decisions of the commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation." (Ralston's Report, Venezuelan Arbitrations of 1903, pages 562, 516); Opinion of Duffield, Umpire, in the Metzger case before the same commission, in which effect is given to the Venezuelan law relative to the amount of damages which the heirs of the deceased may recover for his death. (Do, page 578); Opinion of Ralston, Umpire, in the Miliani case before the Italian-Venezuelan Commission of 1903, which applied the Venezuelan constitution and laws in determining citizenship, the *compromis* of May 7, 1903 between Venezuela and Italy stipulating that "the decisions of the commission shall be based upon absolute equity, without regard to objections of a technical nature or of the provisions of local legislation." (Ralston's Report, Venezuelan Arbitrations of 1903, pages 646 and 754); Opinion of Ralston, Umpire, in the Tagliaferro case before the same commission, in which the government of Venezuela was subjected to liability because of its failure to comply with its own laws. (Do, page 764); Opinion of Paul, Commissioner, before the French-Venezuelan Commission of 1903 in the Rogé case, in which effect is given to the Code of Criminal Procedure of Venezuela, the *compromis* of February 27, 1903 between Venezuela and France stipulating that "the Commissioners, or in case of their disagreement, the Umpire, shall decide all claims upon a basis of absolute equity without regard to objections of a technical nature, or of the provisions of local legislation." (Do, page 497 and 484); Opinion of Plumley, Umpire, in the Massiani case before the same commission in which effect is given to the Venezuelan law in determining who are Venezuelan citizens. (Ralston's Report, French-Venezuelan Commission, protocol of 1902, page 243); Opinion of Plumley, Umpire, in the claim of the heirs of Jean Maninat before the same commission, which involves a similar holding. (Do, page 44 et seq.).

[1] Norwegian Counter-case, page 4.

interested in its sovereign capacity, not to a case like the present, where one of the countries is merely representing its nationals in securing what it deems their just rights with respect to matters arising within the territorial jurisdiction of the other.

It is believed that, by this passage, Dr. Lammasch merely means to say that in such a case the rule which by the municipal law of either or both states, parties to an arbitration, may be applicable to individuals within that state would not necessarily be the rule of law applicable to these states in their sovereign capacity in similar circumstances.

By way of illustration, let us assume that it is the law of prescription in both the United States and Norway that adverse possession for ten years gives title to land. No one would suggest that in an international arbitration between the United States and Norway with respect to a territorial question, adverse possession by one or the other state for the short period of ten years would be sufficient to found a good international title by prescription. But this does not in anywise militate against the position here contended for by the United States that an international tribunal should apply the local law to any matter within the jurisdiction of a particular state. Changing the illustration slightly, let us suppose a Norwegian citizen owned land in the United States. He becomes involved in litigation with an American citizen, or even with the United States itself, and the American courts hold that the American citizen or the Government has obtained a good title to the land in question by ten years' adverse possession. Norway asserts a denial of justice, and the matter goes to international arbitration. It would hardly be contended that an international tribunal should not apply the ten-year prescription period of American law.

2. Again, the Norwegian Counter-case quotes Dr. Lammasch as saying with regard to a denial of justice:

"In particular it can not be decided in accordance with the rules of legal procedure of the defendant state whether a denial of justice[1] is involved, for such a denial might take place in the form of law."[2]

But it is submitted that Dr. Lammasch in this passage simply means to say that the standard set up by municipal law is not con-

[1] The translation of this passage in the Norwegian Counter-case is slightly deficient, the word "Rechtsverweigerung" being translated merely "denial" instead of "denial of justice."

[2] Norwegian Counter-case, page 4.

clusive as to a denial of justice, because there might be a local law which in the language of the umpire in the *Baldwin* case infringed "the general principles recognized in the law of nations."[1]

This is but to say that municipal law if inconsistent with international law yields to international law in an international tribunal, just as the law of a state of the United States yields to the provisions of the Federal Constitution or a statute of Congress duly enacted in pursuance thereof. It is submitted that the Norwegian contention that because international tribunals are bound by international law they are not therefore bound to apply the municipal law of the various nations of the world, as respects matters within their respective jurisdictions, is fairly comparable to a contention that because the courts of the United States are bound by the Constitution of the United States they are thereby relieved from applying the legislation of any state in the Union to a matter within its jurisdiction, so long as this legislation is not in violation of the provisions of the Federal Constitution. Such a position it is submitted is wholly untenable, no matter upon whose authority it is asserted; and it is further submitted that it is not supported by the authority of Dr. Lammasch.

III. The Special Agreement of June 30, 1921, Emphasizes the General Rule.

a. As has been shown in the Case of the United States,[2] Norway repeatedly endeavored to secure the inclusion in the terms of submission in this case of language which would have changed the general rule of international law, by inhibiting this honorable Tribunal from basing its decision on local legislation. Norway twice[3] endeavored to write into the terms of submission under which this honorable Tribunal sits the peculiar provision of the protocols entered into between Venezuela and eleven other nations in 1903, after the blockade of the Venezuelan ports by Germany, France, and Great Britain, providing for the institution of eleven separate

[1] Supra, page 9.

[2] U. S. Case, pages 9–10.

[3] See Original draft of an Arbitration Agreement submitted to the Department of State, informally, by the Norwegian Minister on May 3, 1921. U. S. Case, Appendix, page 28. Note of the Norwegian Minister of June 3, 1921, enclosing second Norwegian draft of arbitration agreement. U. S. Case, Appendix, page 38. See also, case of the United States, pages 9–10. Perhaps it should be added that the Norwegian draft substituted the words "local laws" for "the provisions of local legislation" in the 1903 protocols.

international claims commissions, to consider claims against the Venezuelan government growing out of the Castro regime. These claims conventions all embody in substantially identic language the following provision:

"The commissioners, or in case of their disagreement the umpire, shall decide all claims upon the basis of absolute equity, without regard to objections of a technical nature or of the provisions of local legislation."[1]

The United States twice refused to accept this provision, and substituted other language, the language which was subsequently adopted. Thereafter, the Norwegian Minister recurred to this matter in his note of June 16th, as follows:

"On a separate memorandum, I enclose statements taken from other arbitration agreements where you will see in what form the

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[1] Malloy, Treaties and Conventions of the United States, etc., Vol. 2, 1871.

It is interesting to note how cautiously the international commissions established under these protocols proceeded in applying even this unusual and drastic language. Mr. Jackson H. Ralston, the umpire in the Brignone case, before the Italian commission under the Italian Venezuelan protocol of 1903, in construing this provision, said:

"This unusual provision is to receive a rational and not a strained interpretation, and in the umpire's opinion amounts simply to saying that any local legislation which operates against equity shall be rejected. An extended interpretation rejecting any and all local legislation would at once defeat the very purposes of the Commission, as may well be illustrated by the present case. Mrs. Brignone was married in Venezuela under Venezuelan laws. Deny efficacy to these laws, and no marriage existed, for marriage, is, in civilized nations, regulated by law. Her deceased husband acquired a complete interest in partnership assets from his associate (the partnership itself being created in accordance with the provisions of local law) by virtue of laws providing for such transfers. Proofs in this or in other cases have been taken before judges created by local laws and in the manner they provide. Reject local laws indiscriminately and the whole fabric of sworn testimony built up in more than 300 cases presented or to be presented to the Commission absolutely fails." Venezuelan Arbitrations of 1903, Protocols, Opinions, Summary of Awards, etc., *Ralston's* report. Page 719. See also the opinion of *Duffield*, Umpire, in the Brewer, Moller & Co. case under the German-Venezuelan protocol of 1903, where he says:

"First. The umpire is of the opinion that the articles of the code in question are not local legislation within the meaning of the protocol. The parties to the protocol primarily intended by these words, it is quite evident, that Venezuela should be estopped from insisting upon the general provision in her law requiring foreigners as well as citizens to present their claims against the Government to the courts of Venezuela. Incidentally, of course, like provisions of local legislation were intended to be excluded; but it cannot be presumed that all the laws of Venezuela with reference to the formation of corporations or of partnerships, or of limited associations, or in respect to the rights and obligations of holders of real estate were so included. Neither can it be reasonably presumed that it was intended to estop Venezuela from invoking the provision of local legislation to which foreigners, by associating themselves with Venezuelans, and by their voluntary and solemnly executed consent, had agreed. *A fortiori* must this be the case under circumstances like those under consideration, where, by the agreement between the foreigners and the Venezuelan citizens, the foreigners expressly stipulate that all right of property in the effects of the association shall be vested in the Venezuelan citizen." Venezuelan Arbitrations of 1903, Protocols, Opinions, Summary of Awards, etc., *Ralston's* report. Pages 596–597.

Concerning the meaning of the words "local legislation" as used in these claims conventions, see opinion of Plumley, Umpire, in the Aroa Mines cases before the British-Venezuelan Commission of 1903, Venezuelan Arbitrations of 1903, protocols, opinions, summary of awards, etc., Ralston's Report, pages 378–380, 374–378.

Reference is also made in this connection to a number of the cases cited in the footnote, *ante*, pages 9–10.

issues to be arbitrated have been consistently stated. In view of those precedents, I urge that the word 'law' in 'Article I' be eliminated. I beg to state that the word 'law' as a basis for international arbitrations has not been applied in any of the arbitration agreements before the Permanent Court of The Hague, and as far as I can see it is not to be found in any of the other agreements mentioned by Moore in his 'History and Digest of the International Arbitrations' to which the United States has been a party.

"As the word 'law' has thus not in any case where the United States has been a claimant against other countries been used I trust that the United States Government will not insist upon this word being applied in a case when another country is claimant against the United States. If the word 'law' should be insisted upon, it ought to be described as 'public law.' This stipulation has been used in a few of the previous arbitration cases,"[1]

and Mr. Hughes replied:

"You urge that the word 'law' in Article I of the draft proposed by the Department be eliminated and state that this word 'as a basis for international arbitrations has not been applied in any of the arbitration agreements before the Permanent Court of the Hague.' As of possible interest in connection with this point, I beg to invite attention to Article III of the Agreement between France, Great Britain, Spain and Portugal for the Arbitration of Claims Relating to Religious Properties, signed at London, July 31, 1913. This Article, in a translation from the French which I believe to be accurate, reads as follows:

"'The Tribunal shall examine and decide the aforesaid claims in accordance with the conventional law applicable thereto, or that failing, according to the general provisions and principles of law and equity.'

"Whichever term, 'law' or 'public law,' might be used in the agreement, I presume that the Arbitral Tribunal would apply, as is desired, any principles and rules of law which, in its judgment, might be deemed applicable to the determination of the claims to be arbitrated. For reasons which have been indicated to you at length I prefer the term 'law.' I feel certain that this term furnishes a basis of arbitration, grounded on precedent, and fair to both Governments in the light of the facts involved in the claims in question."[2]

b. The Norwegian Counter-case contends that Mr. Hughes' language here shows that he "did not hold the narrow view set forth in the Case of the United States." It is difficult to follow the logic of this suggestion. Mr. Hughes declined, in the face of the most urgent insistence, to omit the word "law" from the terms of submission, or even to qualify it so as to read "public law." He said, in entire harmony with the present argument, that "whichever term, 'law' or

[1] Mr. Bryn to Mr. Hughes, June 16, 1921. U. S. Case. Appendix, page 44 at 45. U. S. Case, page 9.

[2] Mr. Hughes to Mr. Bryn, June 29, 1921. U. S. Case, Appendix, page 47. U. S. Case, page 10.

'public law,' might be used," he presumed "that the Arbitral Tribunal would apply, as is desired, any principles and rules of law which, in its judgment might be deemed applicable to the determination of the claims to be arbitrated." In other words, Mr. Hughes believed just as has been argued here, that even if the words "public" or "international" law had been used, the obligation to apply the municipal law of the United States to matters within the jurisdiction of the United States would have been the same. Nevertheless, the question having been raised, he did not wish to afford ground for any doubt as to the plain meaning of the terms of submission by qualifying in any way the plain word "law."

c. It will be noted that Secretary Hughes expressed the opinion that the term "law" furnished "a basis of arbitration * * * fair to both Governments, in the light of the facts involved in the claims in question." The United States statute prohibiting assignments was well known in Norway before the negotiation of the Special Agreement of June 30, 1921, as is shown by the repeated references thereto in the Norwegian Court Decisions.[1]

That the United States statute forbidding the allowance of interest on claims against the Government was also known to the Norwegian negotiators is evidenced by the fact that it is referred to in Captain Hanssen's brief of November 5, 1919.[2]

It will be remembered that Captain Hanssen was a member of the Technical Commission, which was dispatched to the United States in 1921 by the Norwegian Goverenment to "assist and collaborate with the Legation in the negotiations with the Government of the United States for the settlement"[3] of the Christiania Group claims, that is to say, in the negotiation of the Special Agreement of June 30, 1921.

These particular statutes, together with the other laws and judicial decisions of the United States, governing the whole question of "just compensation" for property taken for public use, were therefore unquestionably in the minds of the negotiators of the special agreement of June 30, 1921. Norway repeatedly endeavored to ex-

[1] B. Stolt Nielsen vs. Bjorn Bjornstad & Co., U. S. Counter-case, Appendix, page 380 at 388. The Bestum II, Judgment of the Town Court. U. S. Counter-case, Appendix, page 403 at 406.

[2] See U. S. Counter-case, Appendix, page 246 at 256, where it argues that this statute does not apply in cases of "just compensation."

[3] Mr. Bryn to Mr. Hughes, March 23, 1921. U. S. Case, Appendix, page 23.

clude this municipal legislation from the purview of this honorable Tribunal by a special provision in the terms of submission, but completely failed to accomplish this result.

It is respectfully submitted that the present Norwegian contention is simply an attempt to undo the work of the negotiators and rewrite the terms of submission, and it is confidently believed that the Tribunal will not yield to this suggestion but will apply to these claims those provisions of local law by which in accordance alike with the provisions of international law and the terms of the special agreement of June 30, 1921, they must be determined.

B. WHAT WAS REQUISITIONED.

The contentions of the United States are: (1) that by the requisition in question absolute title and not merely use was taken; and (2) that the property requisitioned included only (a) partly constructed ships, (b) materials, machinery, equipment and outfit collected for the completion of the ships and (c) commitments (or contracts) for materials, machinery, equipment and outfit for the completion of the ships.

It is denied that the requisition was intended to include, or did in fact include, any shipbuilding contracts, or that any such contracts were at any time or in any manner, ever requisitioned.

I. Title, Not Use, Was Taken.

This assertion admits of a threefold demonstration:

1. The power to requisition was by the Act of Congress devolved directly upon the President of the United States with authority to exercise it through such agencies as he might select.[1]

In pursuance of this statutory authority the President on July 11th 1917, by an executive order designated two distinct agencies:

(1) The Emergency Fleet Corporation, with authority to requisition vessels *in process of construction*, contracts for the construction of such vessels and the completion thereof, and materials for ship construction, and

(2) The Shipping Board, with authority to requisition *constructed vessels.*[2]

Upon reading this executive order it will be observed that the authority of the Shipping Board with reference to constructed vessels is given in the alternative to take over "the title *or* possession"; while in the case of the Fleet Corporation the authority is in absolute terms to requisition "vessels in process of construction". It is in accordance with the ordinary processes of reasoning, as well as with the settled rules for the construction of language, that a difference in phraseology imports a difference in meaning. The

[1] United States Case, Appendix, page 88.
[2] U. S. Case, Appendix, page 91.

question, why was the language varied?, admits of no other reasonable answer. Here the difference in phraseology, which cannot be regarded as fortuitous in an instrument of such gravity, seems to make it conclusive that the President intended in case of *completed ships* to allow the Shipping Board to requisition either the use *or* the title, as the Board might determine; but in the case of vessels *in process of construction*, where the alternative words "title or possession" are omitted, the President intended that the requisition should be absolutely of the thing itself.

2. It is obvious that a completed ship, being ready for use, may be taken over for use, but a partly constructed ship, or, even more clearly, materials to be subsequently built into a ship, admit only of being taken over absolutely and do not admit of an appropriation for *use*, since they are incapable of use until they form part of a completed whole.

3. The order of requisition itself in terms purports to take over absolute title.

"all * * ships * * under construction in your yard and certain materials * * and commitments for materials * * necessary for their completion are hereby requisitioned by the United States".[1]

This language is direct, precise and absolute, without limitation, reservation or qualification. There is nothing in the order which remotely suggests that the United States intended to take, or, in fact, did take, anything less than the absolute title. This is also borne out by the written instructions of the Fleet Corporation given on August 22, 1917 to District Officer McDermott for transmittal to Pusey & Jones Company which are prefaced by the recital: "The ships now under construction at your plant * * * having been requisitioned * * * *and title thereto taken over by the United States* * * *"[2] It seems clear, therefore, (1) that the authority conferred upon the Fleet Corporation did not include the power to requisition for use; (2) that the nature of the property requisitioned was such as to render its appropriation for use practically an impossibility, and (3) that what was actually requisitioned was title and not use.

It is not necessary to pursue the subject further in this connection since it is not disputed that the United States did, in fact, ultimately

[1] W. L. Capps to Pusey & Jones, August 3, 1917, U. S. Case, Appendix, page 212.

[2] U. S. Case, page 57. The same letter of instructions was sent to other district officers for transmittal to the other shipbuilders.

take title. The importance of what has just been said, however, will be emphasized when we come to discuss the contentions of the Norwegian claimants that (a) title was not taken or intended to be *taken on August 3, 1917, nor until October 4th following*, and (b) that in taking title instead of use the United States discriminated against the citizens of Norway.

II. Only Physical Property Was Requisitioned—Shipbuilding Contracts Were Not Requisitioned.

"Upon the most important issue in this whole proceeding—whether the requisition reached the contracts or merely the physical property in the shipyards—the learned Agent of the United States contents himself with asserting that whatever was taken, contracts were not. But he makes no effort to explain the administration of the requisition upon any other basis."

Introduction, Norwegian Counter-case, pages 1–2.

"The fifth conclusion of the United States is as follows: * * *

"Subdivision (a) is elaborated as follows:

"'(a) The property taken in this case consists of certain hulls in process of construction, materials, machinery and equipment therefor, and commitments for materials, machinery and equipment therefor. No completed ships were taken, and nine of the hulls were less than one per cent complete. The United States did not intend to take, and did not take, in fact or in law, the contracts under which the hulls in question were being constructed.'

"This, of course, is denied absolutely. The record is clear that, while to some extent the United States used the phraseology of requisitioning only 'hulls,' nevertheless contracts were requisitioned. The contracts were property and compensation must be paid for them."

Conclusions, Norwegian Counter-case, pages 97–98.

The accuracy of the foregoing contention of the United States is established by the terms of the requisition order and the intent of the governmental authorities issuing it, as well as by the practical construction of those who carried it into operation. Whether the contracts were requisitioned, as the Norwegian Counter-case says, presents for determination the most important question in the case. Let us first consider

a. THE TERMS OF THE ORDER.

The substantive part of the order of requisition is as follows:

"* * all power-driven cargo-carrying and passenger ships above 2,500 tons dead-weight capacity under construction in your yard and certain materials, machinery, equipment, outfit, and com-

mitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States."

1. *Expressio unius est exclusio alterius* is a canon of interpretation applicable to every variety of written instrument. It is not a technical rule of construction but a principle of sound logic and common sense. Where a statute or an order or a contract specifically enumerates certain things upon which it is to operate sound reason demands that we should exclude from its operation all other things; otherwise the enumeration is meaningless. The application of the rule to the language of this order of requisition is obvious and convincing.[1] The things requisitioned are precisely enumerated. They are:

(1) "All * * * ships * * * under construction in your yard."

(2) Materials, machinery, equipment and outfit necessary for the completion of these ships.

(3) Commitments for such materials, machinery, equipment and outfit.

It is impossible to find in this precise delimitation anything which remotely suggests the requisition of contracts for building ships. The contracts referred to in the order, and there called commitments, are only those entered into for the furnishing of materials, machinery, equipment and outfit, and obviously such contracts are those made by the Shipbuilding Company with third persons, and not contracts between owner and shipbuilder for the construction of the ships.

2. The language which we have quoted constitutes the entire substantive portion of the order, so far as it sets forth what was requisitioned. What follows consists of instructions to the shipbuilder who is first directed to complete the construction of the requisitioned ships under construction with all practicable dispatch. The phrase "the compensation to be paid will be determined hereafter, and will include ships, material and *contracts requisitioned*," enumerates these various things by way of recital, merely for the purpose of pointing out the things for which compensation is to be paid. The ships, material, and contracts for which compensation is to be paid, are those which have been requisitioned, and in order to determine what these things are we must go to the substantive order; and there we find

[1] Justice Wilson said in Chisholm vs. Georgia, 2 Dall. 454: "In an instrument well drawn as in a poem well composed, silence is sometimes most expressive."

what is meant by the word "ships", namely, ships of a certain description under construction; we find what is meant by the word "material", namely, materials, machinery, equipment, and outfit; and we find what is meant by the word "contracts", namely, commitments for materials, machinery, equipment, and outfit.

The same is to be said with reference to the use of the words "these ships and contracts" in the following paragraph.

The only other reference to contracts is contained in the last paragraph of the order as follows:

"You will report immediately whether any additional contracts are under consideration and their character and extent, and will not enter into any additional contracts or commitments with respect to merchant tonnage without express authority from this corporation".

The contracts here forbidden to be entered into undoubtedly include contracts for ship construction; but this affords no warrant for construing the word "contract" in the preceding paragraphs in the same manner. We are dealing with two general classes of contracts: first, contracts (or commitments) for materials, etc. entered into with third persons, and, second, contracts between owner and shipbuilder for the construction of ships. Whether the one or the other be intended in any given instance depends not upon the use of the word "contract", which applies alike to both, but upon the context or the qualifying words. Here the context shows that the second class of contracts was included; in the preceding paragraphs the context just as definitely shows that only the first class was meant. To hold otherwise is to give to the order a strained and unnatural meaning, and to convict the officers who framed it of being so stupid or so careless as to omit from it one of the most important things which they had had under consideration. We repeat that it is only the first paragraph of the requisition letter which undertakes to set forth what is requisitioned. If it had been intended to requisition shipbuilding contracts, here, and here only, was the place to say so. Everything which follows the first paragraph is only by way of directing the shipbuilder as to his duties and informing him as to his rights consequent upon the requisition. We submit that it is altogether unreasonable to suggest that the men who have carefully considered whether ships under construction or contracts for ships were to be requisitioned, would frame an order specifically requisitioning ships under construction, carefully includ-

ing "commitments for materials, etc." necessary to the completion, and fail expressly to specify shipbuilding contracts if their requisition had been intended.

Moreover, as we show under the next heading, the two methods were presented and considered in the alternative. To have requisitioned the shipbuilding contracts in addition to what was requisitioned, would have been to do the same thing twice, since the requisition of these contracts alone would have resulted in accomplishing the ultimate thing desired, namely, the acquisition and completion of the ships by the United States. Having requisitioned the partly built ships, the materials and contracts for materials, and ordered the builder to complete the ships with all practicable dispatch, the taking over of the building contracts was quite evidently considered to be unnecessary. In other words, the taking of the building contracts was not to be considered in the light of an addition to, but only as an alternative for, what was actually enumerated and taken.

b. In this connection, it is significant that practically contemporaneously with the sending out of the requisition letter, a requisition telegram was issued in substantially the same form as the first paragraph of the letter. This telegram contains no reference to contracts whatsoever but simply requisitions ships under construction and "materials, machinery, equipment and outfit thereto pertaining."[1]

c. But if, by any chance, the failure to include building contracts had been an oversight it certainly would have been speedily corrected in the subsequent transactions and correspondence between the parties concerned. But nothing of that sort happened. On the contrary, the Shipping Board, with one possible exception, to be considered hereafter, always uniformly and consistently, directly and indirectly, in word and in action, construed and treated the order of August 3rd as requisitioning *ships* under construction, and not *contracts* for the construction of ships.

THE INTENT OF THE REQUISITION ORDER.

d. The Norwegian case expresses doubt as to the intention of the responsible officers of the Fleet Corporation who framed and issued the order in the matter of the requisition of contracts.

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[1] W. L. Capps to Pusey & Jones, Company, Telegram, August 4, 1917, U. S. Case, Appendix, page 212.

"What the intention of the Board was on August 3rd, when the requisition order was sent out, we do not know, and we doubt whether anybody knows."[1]

1. The best evidence of the intent of the Fleet Corporation is, of course, the language of their order, for nothing can better express the intention of one who has no reason for concealment than his own direct words. Where these words are clear there is no occasion for inquiry beyond them. We have shown that the meaning of the order of requisition is entirely free from doubt and hence there is neither occasion for speculation in respect of the intention, nor excuse for the assumption that the intention is involved in doubt. If it be meant, however, to suggest that the Fleet Corporation did not mean what it plainly said, or that notwithstanding its precise language it nevertheless meant to requisition contracts, we insist there is no circumstance which affords the slightest ground for the suggestion. On the contrary, the policy to be followed by the corporation had been carefully considered, and the character, scope and detail of the requisition carefully worked out in advance. This is clearly indicated by the memorandum of Mr. Joseph P. Cotton, counsel for the corporation, in support of General Goethal's program.

2. Mr. Cotton points out that there are three distinct ways by which the requisitioning power of the corporation may be exercised: (1) by commandeering the yards, or (2) the ships building, or (3) the contracts. These three methods are presented in the alternative. The exercise of one of them necessarily excludes the other two. To take the partly constructed ships plus the material and the commitments for material necessary to complete them, is to take everything that could be taken to insure completed ships. To take over the ship-yards is to do the same thing. To take the contracts for building the ships is again to accomplish the same result. It is evident that the corporation chose the second method outlined by Mr. Cotton and thereby rejected the first and third methods. Mr. Cotton in his memorandum points out the advantage of this course. He says:

"The most expensive way would be to take the yards, and there seems no need of doing that unless the Government desires to turn the shipbuilding business into a national business at once. Congress has not indicated such an intention. If the contracts are commandeered, it would seem necessary to pay the yard its estimated

[1] Norwegian Case, page 3.

profit on such contracts and the prospective owner of the boat its estimated value (which would be usually more than its contract price). If, however, not the contracts but the ships themselves are taken, the policy of the yard can be just as efficiently regulated and it would seem necessary to pay the yard its agreed profit but not the owner of the ship. This is pretty clearly so where the existing contracts for the construction of the ship relieve the yard of responsibility in case of commandeering, as many of the contracts do. It is probably also so where the contract is silent on the particular point."[1]

Evidently the corporation saw the force of Mr. Cotton's suggestion and acted accordingly.

3. The Emergency Fleet Corporation delegated to Admiral W. L. Capps, the authority devolved upon that body by the President, and it was that officer who issued and assumed the responsibility for the requisition order. It may, therefore, be supposed that he, more than any one else, is qualified to speak with reference to the intent if the intent be still in question. In a communication dated April 26th 1922, he says that:

"* * * the intent of this order was, as specifically stated, to requisition 'ships * * * under construction * * * and certain materials, machinery, equipment, outfit and commitments for materials, machinery, equipment and outfit necessary for their completion.'"

And, further, he says:

"In the exercise of these delegated powers through the requisition order of August 3rd 1917, it was the intent not to requisition either 'contracts for ships' or 'shipbuilding plants' but 'ships * * * under construction * * * and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion,' as explicitly stated in the requisition order itself, extracts from which are quoted in the preceding paragraph."[2]

III. The Practical Construction of the Requisition Order—Statements.

a. EXPRESS STATEMENTS THAT THE ORDER DID NOT REQUISITION CONTRACTS.

September 11, 1917. Only a little more than a month after the requisition letter, Admiral Capps, the General Manager of the Emergency Fleet Corporation, to whom the Corporation had delegated the

[1] U. S. Counter-case, page 36.
[2] U. S. Counter-case, page 37.

power it had received from the President to make requisitions of ships in process of construction, who had signed the requisition telegram and requisition letter of August 3, telegraphed to John F. Blain, District Officer of the Northern Pacific District at Seattle, Washington, as follows:

"Referring your letter September fourth transmitting copy letter Northwest Steel Company relative to their interpretation Corporation's letter of twenty-second stop Inform Northwest Steel Company Corporation has *not requisitioned contracts* only *ships under construction* stop Letter of twenty-second perfectly clear does not require interpretation stop Corporation will not protect builder for all parts of contract he has protection as provided by statute stop In future forward original letters of this character written copy for your file."[1]

It is submitted that there could hardly be a more authoritative interpretation of the requisition letter than the above telegram. It not only expressly states that the Corporation "has not requisitioned contracts" but proceeds to explain that the Corporation "will not protect builder for all parts of contract" because "he has protection as provided by statute." In other words, the statute has given the shipbuilder as against the Government not a contractual right growing out of the requisition of contracts for ship construction, but a statutory right of just compensation, having nothing whatever to do with that contract.

September 18, 1917. Admiral Bowles, Manager of the Construction Division, followed up Admiral Capps' telegram with a letter addressed to the Northwest Steel Company, which reads in part as follows:

"For your information, however, and in order to clear up any doubts that may exist in your mind, we state that the order of August 3d *commandeered the ship and the materials and not the contract* under which the ship was constructed for the former owners. In that same order you were directed to complete the ship on behalf of the United States. Such a direction carries with it the statutory obligation of paying you 'just compensation' for your work. Our offer of August 22d was for the purpose of fixing the just compensation to be paid to you."[2]

September 21, 1917. He added the following admonition to the Northwest Steel Company:

"You apparently are under a fundamental misconception of your present position. You do not seem to appreciate the fact that you are

[1] U. S. Case, Appendix, page 499. Italics ours.
[2] U. S. Case, page 61; U. S. Case, Appendix, pages 500 and 501. Italics ours.

under a direct order of this Corporation, acting as the agent for that purpose, of the President of the United States, to complete the ships in your yard which were under construction August 3d, 1917. By the provisions of the act of June 15th, 1917, compliance with all such orders is obligatory and takes precedence over all other orders and contracts. If you proceed with the completion of these ships this Corporation is under statutory obligation to pay you just compensation.

"What that just compensation shall be will be determined by this Corporation, also acting for such purpose as the agent of the President. A consideration of these fundamental facts ought to indicate to you that you are in no position to bargain (or to use your words 'to enter into a contractural relation') in respect to these ships."[1]

October 1, 1917. The Pusey & Jones Company wrote the United States Shipping Board raising expressly the question of the commandeering of contracts and the payment of compensation under said contracts. The letter reads in part as follows:

"* * We understand that your Corporation has now commandeered all of our existing contracts which covers hull Nos. 1001 to 1014 both inclusive.

"We further understand that your Corporation will pay to us upon duly authenticated application the specific sums set forth in each contract."[2]

October 4, 1917. The Fleet Corporation made the following succinct response:

"In order that there may be no misunderstanding in regard to the requisitioning action, permit me to state that *your understanding that the contracts for these hulls have been requisitioned is incorrect.* The requisitioning order only covered the hulls themselves and the material therefor."[3]

December 27, 1917. At the same time that the effect of the requisition order was being made clear to the shipbuilders it was being explained to Congress. In testifying before the Senate Committee on Commerce Admiral Bowles said:

"* * I want to call attention to the fact that this requisitioning order requisitioned or commandeered these ships themselves and not the contracts."[4]

June 18, 1918. Mr. Ralph James Bullowa endeavored to raise the same question more diplomatically, as follows:

"Could you arrange to let me have a certificate showing when the United States Shipping Board Emergency Fleet Corporation requi-

[1] U. S. Case, Appendix, page 501.
[2] U. S. Case, page 61; U. S. Case, Appendix, page 244.
[3] U. S. Case, page 61; U. S. Case, Appendix, page 246. Italics ours.
[4] U. S. Counter-case, Appendix, page 418.

sitioned Seattle Construction & Dry Dock Company Contract No. 95. I would appreciate if you would hand this to some of your assistants so that they could let me have such certificate, as it is required in connection with some matters in Norway."[1]

The "assistant" to whom this request was referred was Mr. Edwin H. Updike, in whose reply of the day following the correct meaning of the requisition order is stated:

"Replying to your letter of June 18, I beg to state that the Fleet Corporation *has not requisitioned* any Seattle Construction and Drydock Company *contract*."[2]

Responding immediately, on June 20, Mr. Bullowa put this question:

"I have your letter of June 18 in which you advise me that the Fleet Corporation has not requisitioned any Seattle Construction & Dry Dock Company contracts. I assume by this that you do not mean that the Fleet Corporation did not requisition vessel No. 95. I would appreciate if you would write me a letter advising me that the Fleet Corporation did not requisition No. 95, and if they did requisition No. 95, advising me on what date."[3]

Mr. Updike replied June 21, 1918, as follows:

"The *vessel* to which you refer in your letter of June 20th, was *requisitioned* on August 3, 1917, by notice, a copy of which is hereto annexed."[4]

August 26, 1918. Mr. Edward B. Burling, Chief Counsel, United States Shipping Board, prepared a memorandum for Mr. Sherman L. Whipple, General Counsel, United States Shipping Board, on the subject of just compensation to the Norwegian claimants, in which he said:

"All that was taken, therefore, was what our Supreme Court has called a 'congeries of wood and iron.' *The contracts were not commandeered.*

"* * *

"* * * My suggestion is that we must consider not the value of ships but the value of the only thing that was taken, *to-wit, a mass of wood and iron* which would never become a ship unless this country diverted ship plates and ship labor from its own ships to these Norwegian ships. And that was something this country was not at all likely to do.

"* * *

"Clearly, however, the thing which this country commandeered on August 3, was not the obligation to deliver a ship because the Norwegian was the owner of no obligation which this country cared

[1] U. S. Case, page 62; U. S. Case, Appendix, page 442.
[2] U. S. Case, page 62; U. S. Case, Appendix, page 442. Italics ours.
[3] U. S. Case, page 62; U. S. Case, Appendix, page 442.
[4] U. S. Case, page 62; U. S. Case, Appendix, page 443. Italics ours.

to acquire or which could be performed without the consent of this country."[1]

October 17, 1918. Mr. Edward N. Hurley, Chairman, United States Shipping Board, wrote to Senator Knute Nelson, United States Senator from Minnesota:

"Let me state in passing, that *we did not requisition the contracts* under which the vessels were being built. The contrary has been claimed, but on no sound basis."[2]

This letter is perhaps as formal and well considered a statement of the attitude of the Shipping Board as can be found.

October 17, 1918. Mr. Sherman L. Whipple, General Counsel of the United States Shipping Board, wrote to Mr. Christoffer Hannevig, at that time representing certain if not all the claimants of the Christiania Group:

"Incidentally I notice that you speak of 'requisitioned contracts.' If you will look at the requisitioning order of August 3d, you will notice that *contracts were not requisitioned.* The requisitioning letter of August 3d reads:

"' * * all power-driven cargo-carrying and passenger ships above 2500 tons d. w. capacity, under construction in your yard and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment and outfit necessary for their completion are hereby requisitioned by the United States, * *'

"The requisitioning telegram of August 3d is substantially the same.

"If you still assert that the contracts were requisitioned, may I ask you to kindly point out that part of the requisitioning order on which you found that contention?"[3]

To this Mr. Hannevig replied on October 18, 1918, in substance that he was "at a loss to understand"[4] what Mr. Whipple meant.

November 20, 1919. Messrs. Lincoln R. Clark and John A. Beck, of the Legal Department, in a report concerning the Christiania Group of Norwegian claims, dated November 20, 1919, said:

"The Fleet Corporation requisitioned materials, not ship-construction contracts."[5]

December 2, 1919. The Requisition Claims Committee, consisting of General E. M. Weaver, Admiral H. H. Rosseau, and Mr. R. A. Dean, one-time General Counsel, in a report on the Christiania Group of Norwegian claims, made the following finding:

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[1] U. S. Counter-case, page 41; U. S. Counter-case, Appendix, page 11 to 18. Italics ours.

[2] U. S. Case, Appendix, page 150 at 152. Italics ours.

[3] U. S. Counter-case, Appendix, page 15 at 16. Italics ours.

[4] U. S. Counter-case, Appendix, page 16.

[5] U. S. Case, Appendix, page 158 at 160.

"(8) The Emergency Fleet Corporation did not requisition the ship construction contracts between the above-mentioned shipbuilding companies and the contracting purchasers, but did requisition the materials on hand applicable to ship construction and belonging to the contracting purchasers."[1]

Mr. Robert A. Dean, one-time General Counsel of the Shipping Board, and Mr. J. L. Ackerson, one-time Vice-President and Trustee of the Emergency Fleet Corporation, are reported in the Appendix to the Norwegian Counter-case as of the opinion that contracts were not requisitioned.

Mr. Dean said:

"Mr. Dean: We took over the hulls and materials in these various yards throughout the country but we did not take over these contracts. Now, when we did that it amounted to a frustration of the contracts and they came in and presented a claim to us.

"The Chairman: But you did take over the contracts and the right to the ships, because that is what the law authorized.

"Mr. Dean: Yes, the law authorized us to requisition hulls, materials, or contracts. Mr. Cotton at that time was the legal advisor, and the order was drawn with the idea of taking over the hulls and materials but we have been very careful to see that we did not take over the contracts because the contracts at that time were worth more than $300 a ton, or at least it would have cost us $300 a ton, and if the Government had approached the matter in that way your expenditures would have been greatly increased."[2]

Mr. Ackerson said:

"Mr. Ackerson: I might offer a little explanation there. As Mr. Dean says, we made a very close distinction between requisitioning contracts and requisitioning vessels, and my understanding is, although I am not a lawyer, that they did a very good thing when they did that. We requisitioned the hulls and materials on hand, and then went ahead with the ships."[3]

The entire record discloses only a solitary exception in the uniform and consistent course of the Shipping Board and the Fleet Corporation in maintaining that ships and not contracts were requisitioned. This is the so-called "admission" by the Department of Justice of the United States, in the Pusey and Jones cases, that contracts were requisitioned. As heretofore,[4] and subsequently[5] pointed out, this error crept into an otherwise clear record through the inadvertence of counsel unschooled in the history of the activities of the Fleet Corporation.

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[1] U. S. Case, Appendix, page 186 at 188.
[2] Norwegian Counter-case, Appendix, pages 249 and 250.
[3] Norwegian Counter-case, Appendix, page 250.
[4] U. S. Counter-case, page 43.
[5] Post page 109.

b. INCIDENTAL AND INFERENTIAL DOCUMENTARY EVIDENCE THAT CONTRACTS WERE NOT REQUISITIONED.

In addition to the express declarations of the officers of the Shipping Board and the Fleet Corporation just discussed, the record is replete with incidental statements and references from which the inference naturally and inevitably arises that the parties on either side were always conscious of the fact that contracts had not been requisitioned.

The course of dealings with the Pusey & Jones Company may be taken as typical of the dealings with the other shipbuilding companies. It is especially appropriate to consider the dealings with this company since it is with these dealings that the answers of the Shipping Board and the Emergency Fleet Corporation in the Pusey & Jones cases before the Supreme Court of the District of Columbia have to do. We shall not attempt to do more than call attention to a few out of many of these statements and comment thereon will be of the briefest possible character.

August 7, 1917. Admiral Capps to the Pusey & Jones Company (referring to the requisition order):

"This order particularly refers to *your vessels* of 1600 [should be 2500] gross tons now under construction, which are hereby requisitioned."[1]

August 8, 1917. Mr. Lynch, of the Pusey & Jones Company, answers this letter:

"* * advising us that you have requisitioned all ships now building in our yard above 2,500 tons deadweight capacity."[2]

August 16, 1917. Admiral Capps to the Pusey & Jones Company, refers to:

"* * general order under date of August 3d, *requisitioning ships* over 2,500 tons deadweight capacity now under construction in your yard, * *"

and adds:

"* * you are required to immediately furnish general plans and detailed specifications of the *ships requisitioned*, copies of contracts and supplemental agreements in relation thereto, and other particulars as to owner, date of completion, payments made to date, amounts still due, and any other information necessary to a fair and

[1] U. S. Case, page 52.
[2] U. S. Case, page 52.

just determination of the obligations of the Emergency Fleet Corporation."[1]

It will be seen that these quotations refer to "ships requisitioned," not "contracts requisitioned," but speak of "contracts * * in relation thereto." Had contracts been requisitioned it would have been natural to have used some such expression as "ships and contracts requisitioned." The letter then goes on to request suggestions for changes which will expedite placing the vessel in service, insure the safety of the vessel, and reduce the cost without loss of efficiency. Suggestions are likewise invited respecting modifications in order to make the vessel suitable for general cargo. The letter further says it is desired that subject to the advanced stage of construction certain enumerated additions are to be made, including cold storage rooms, an ice machine, accommodations for gun crew, search lights, devices for the purpose of lessening visibility, gun foundations, etc.[2] There is no suggestion that these changes are to be made in accordance with the contract provisions.

August 22, 1917. Admiral Capps again addressed the Pusey & Jones Company, referring to "each of the *requisitioned ships* that you are building.[3]

August 22, 1917. District Officer McDermott wrote Pusey & Jones, making reference to "*vessels commandeered* by the Corporation."[4]

August 22, 1917. Admiral Capps addressed to District Officer McDermott the following important letter:

"Referring to the *vessels* under construction in the yard of Pusey & Jones Company, Wilmington, Delaware, *requisitioned* under the Corporation's order of August 3d. Precedent to the final examination of the *contract for the vessels in question you are requested to inform the shipbuilder as follows:*

"The ships now under construction at your plant and referred to above, having *been requisitioned by the duly authorized order of this Corporation, and title thereto taken over by the United States*, and an order having been placed with you by due authority to complete the construction of said ships with all practicable dispatch, you are further ordered by the President of the United States, represented by this Corporation, *to proceed in the work of completion heretofore ordered, in conformity with the requirements of the contract, plans and specifications under which construction proceeded prior to the requisition of August 3, 1917, in so far as the said contract de-*

[1] U. S. Case, page 52.
[2] U. S. Case, Appendix, pages 215, 217–219.
[3] U. S. Case, Appendix, page 224. Italics ours.
[4] U. S. Case, Appendix, page 225. Italics ours.

scribes the ship, the materials, machinery, equipment, outfit, workmanship, insurance, classification and survey thereof, including the meeting of the requirements of the said contract, and all tests as to efficiency and capacity of the ship on completion, and in so far as the contract contains provisions for the benefit and protection of the person with whom the contract was made, but not otherwise.

"All work will proceed under the inspection of such persons as have been or may hereafter from time to time be designated by this Corporation for that purpose.

"For the work of completion heretofore and herein ordered, *the Corporation will pay to you amounts equal to payments set forth in the contract and not yet paid;* provided, that *on acceptance in writing* of this order *you agree that on final acceptance of the vessel to give a bill of sale to the United States in satisfactory form conveying* all your rights, title, and interest in the vessel, together with your certificate that the vessel is free from liens, claims, or equities, with the exception of those of the owner, and then only to those set forth in the contract. Compensation to the shipbuilder for expedition and for extra work will, when deemed appropriate, be made the subject of a subsequent order.

"This order applies only to vessels *actually* under construction, and *in accepting it the Corporation expects you to inform it of the actual* stage of construction of each vessel or the parts to be assembled therein on the *date of requisitioning, August 3, 1917.* The Corporation reserves the right to decide whether or not *a vessel was actually under construction on August 3, 1917, on consideration of the ascertained facts.*

"In replying to this communication please arrange to specify separately the vessels to which this order refers, and refer to the corresponding *contract* in sufficient terms for identification of it.

"Please furnish a copy of this to Pusey & Jones Co., and ask for an early reply."[1]

The terms of this letter were duly accepted by the Pusey & Jones Company on August 23, 1917, and September 14, 1917.[2]

It is submitted that a consideration of the italicised portions of this letter clearly indicates (1) that vessels were requisitioned and not contracts; (2) that the Corporation was placing a statutory order with the shipbuilder to complete these vessels; (3) that it was using only those portions of the contract which were for the benefit of the former owner as the *measure of* the shipbuilder's duty under the order; (4) that it would pay as just compensation to the shipbuilder "amounts *equal to* payments set forth in the contract"; and (5) that the order applies only to "vessels *actually* under construction."

September 18, 1917. The General Manager of the Fleet Corporation inquired of Pusey & Jones as to "brokerage, if any, paid or

[1] U. S. Case, pages 57 and 58; U. S. Case, Appendix, pages 226 and 227. Italics ours.
[2] U. S. Case, page 58; U. S. Case, Appendix, pages 227, 241.

agreed to be paid on account of each uncompleted contract for *vessels covered by the requisition* order of August 3, 1917,"[1] Had contracts been requisitioned, reference would naturally have been made to "contracts covered by the requisition order" instead of to "contracts for vessels covered by the requisition order."

September 28, 1917. Admiral Capps addressed a letter to the Pusey & Jones Company in which the following passages occur:

"Your letter of August 23, 1917, relative to *vessels requisitioned* by this Corporation and under construction in your yard has been received. * * *

"You will proceed with the completion of these hulls to meet the requirements of the contracts under which these ships were being constructed by you for other parties on August 3, 1917.

"As just compensation for, and the reasonable price of such completion, the Corporation will pay to you sums *equivalent to* amounts which were unpaid on the said contracts August 3, 1917. * * *

"The District Officer will be instructed to continue the inspection of work and material to insure that the vessel, when completed, will be equal in all respects to what was contemplated by the requirements of the contracts in force on August 3d, 1917," etc.[2]

This is one of several letters of the same tenor addressed to shipbuilding companies relied on in the Norwegian Case to prove that contracts were requisitioned. On the contrary it is submitted that the language of this letter was admirably adapted to make clear that contracts had not been requisitioned but their terms were invoked as a method of stating the measure of the shipbuilder's duty and as a means of measuring the "just compensation" to be paid under the statute. It is nowhere suggested, however, that the Fleet Corporation was operating under these contracts, much less that they had been requisitioned. The letter makes clear that the Fleet Corporation is liable not for the amount stipulated in the contract but for just compensation under the statute. As "just compensation" and as "the reasonable price of such completion," the Corporation is to pay "sums equivalent to" the amounts which were unpaid on the contracts on August 3, 1917. Under the statute the builders would have been at perfect liberty to refuse this measure of just compensation, accept seventy-five per cent. thereof, and sue in the Court of Claims.[3] The position of the Fleet Corporation obviously was that the price which the shipbuilding company had contracted to

[1] U. S. Case, Appendix, page 242. Italics ours.
[2] U. S. Case, Appendix, page 244. Italics ours.
[3] U. S. Case, Appendix, page 88.

receive might be assumed to be fair and reasonable, and was therefore adopted by the Corporation as a measure of just compensation. But this after all was only the opinion of the Fleet Corporation. The builder was under no compulsion to accept it, as he necessarily would have been obliged to accept the price stipulated in the contract if the contract had been requisitioned and its enforcement undertaken by the Corporation.

Further quotation is not deemed necessary. There are numerous expressions in other letters and documents of a similar character referred to in the note.[1]

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[1] The correspondence of the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation with shipbuilders, shipowners, and representatives of shipowners, with reference to the requisitioning of ships and ship materials, the completion of requisitioned ships, and the financial relation of the Shipping Board and the Fleet Corporation to the shipbuilders, as printed in the U. S. Case, Appendix, pages 195–533, contains among others the following expressions, at the pages hereafter indicated:

Correspondence with the Pusey & Jones Company, the Pennsylvania Shipbuilding Company, the New Jersey Shipbuilding Company, shipbuilders; and Christoffer Hannevig, Bulk Oil Transports, Inc., and the Manss Steamship Corporation, shipowners, and representatives of shipowners:

August 7, 1917, W. L. Capps to Pusey & Jones: "Requisitioning ships." page 215.

August 8, 1917, C. B. Lynch to U. S. S. B. E. F. C.: "* * requisitioned all ships," page 215.

August 16, 1917, W. L. Capps to Pusey & Jones Co.: "* * ships requisitioned," page 215.

August 22, 1917, W. L. Capps to Pusey & Jones Co.: "* * requisitioned ships *" page 224.

August 22, 1917, Geo. R. McDermott to Pusey & Jones Co.: "* * vessels commandeered *", page 225.

August 22, 1917, W. L. Capps to G. R. McDermott: "* * vessels * * requisitioned *" and "ships * * requisitioned *" page 226.

August 30, 1917, C. B. Lynch to Emergency Fleet Corporation: "* * vessels * * requisitioned *" page 229.

August 30, 1917, Pusey & Jones Co. to Quick Work Co.: "* * vessels * * requisitioned *", page 233.

September 1, 1917, Emergency Fleet Corporation to Quick Work Co.: "* * vessels * * commandeered. * *" page 234.

September 13, 1917, Geo. R. McDermott to Pusey & Jones Co.: "* * requisitioned ships." page 241.

September 18, 1917, Emergency Fleet Corporation to Pusey & Jones Co.: "Requisitioned vessels." page 242.

September 28, 1917, W. L. Capps to Pusey & Jones Co.: "* * vessels requisitioned *" page 244.

October 4, 1917, F. T. Bowles to Pusey & Jones Co.: "The requisitioning order only covered the hulls *" page 246.

October 5, 1917, Geo. S. Hoell to W. L. Capps: "* * requisitioned ships, *" page 247.

October 11, 1917, Geo. R. McDermott to Pusey & Jones Co.: "* Requisitioned Vessels." and "* * vessels requisitioned * *" page 247.

October 12, 1917, C. Stewart Lee to Geo. R. McDermott: "* * vessels requisitioned * *" page 248.

Other references of like character may be found on pages 250, 253, 254, 257, 258, 260, 261, 262, 264, 273, 275, 279, 299, 301, 311, etc.

Correspondence with the Manitowoc Shipbuilding Company, shipbuilders, and Christoffer Hannevig, shipowner, and representatives of shipowners:

August 17, 1917, L. E. Geer to W. L. Capps: "* * ships * * requisitioned *", page 365.

August 20, 1917, L. E. Geer to Cunard Steamship Co.: "* requisitioned all ships *" page 367.

August 22, 1917, W. L. Capps to Henry Penton: "* * vessels * * requisitioned *" page 368.

Sept. 4, 1917, H. Penton to Manitowoc Shipbuilding Co.: "* * requisitioned ships * *" page 374.

Sept. 18, 1917, Emergency Fleet Corporation to Manitowoc Shipbuilding Co.: "Requisitioned vessels." page 374.

Sept. 25, 1917, L. E. Geer to Emergency Fleet Corporation: "Re requisitioned ships." page 376.

October 7, 1917, J. E. Thiell to F. T. Bowles: "* * hulls requisitioned * *", page 377.

October 12, 1917, L. E. Geer to H. Penton: "* * vessels requisitioned * *", page 379.

Other references of like character may be found on pages 380, 381, 383, 385, etc.

Correspondence with the Seattle Construction & Dry Dock Company, shipbuilders; Aktieselskabet Rederiet Odfjell and Willy Gilbert, shipowners; and representatives of shipowners:

August 8, 1917, Report of "ships commandeered." page 398.

August 8, 1917, J. F. Blain to W. L. Capps: "* * commandeering ships," page 399.

August 10, 1917, W. H. Todd to W. L. Capps: "* * requisitioned ships. * *", page 400.

August 14, 1917, H. W. Kent to U. S. S. B. E. F. C.: "* * requisitioning of ships * * page 400.

August 22, 1917, W. L. Capps to Eads Johnson: "* * vessels * * requisitioned *" page 400.

August 29, 1917, J. E. Sheedy to U. S. S. B. E. F. C.: "* vessels * * prior to commandeering. *" page 403.

September 12, 1917, F. T. Bowles to J. F. Blain: "* * requisitioned ships * *" page 406.

September 18, 1917, W. L. Capps to Seattle Construction & Dry Dock Co.: "Requisition vessels." page 406.

September 26, 1917, J. F. Blain to Seattle Construction & Dry Dock Co.: "Requisitioned vessels." page 407.

October 3, 1917, C. W. Wiley to W. L. Capps; "* * requisitioning * ships * *", page 409.

October 3, 1917, W. L. Capps to S. O. Stray & Co.: "* * requisitioning * * vessels *" page 410.

October 6, 1917, C. W. Wiley to U. S. S. B. E. F. C.: "Requisitioned ships." page 411.

Other references of like character may be found on pages 413, 419, 420, 426, 430, 437, 438, etc.

Correspondence with the Skinner & Eddy Corporation, shipbuilders; with Messrs. B. Stolt-Nielsen, J. Ringen, and Christoffer Hannevig, shipowners; and representatives of shipowners.

August 23, 1917, J. F. Blain to Skinner & Eddy Corporation: "* * commandeered vessels." page 449.

September 8, 1917, Skinner & Eddy Corporation to Louis Titus: "* * commandeered ships * *", page 451.

September 10, 1917, Louis Titus to U. S. S. B. E. F. C.: "* * requisitioned ships * *", page 452.

September 15, 1917, John Purse to D. H. Bender: "* * vessels commandeered * *" page 455.

September 18, 1917, W. L. Capps to Skinner & Eddy Corporation: "Requisitioned vessels." page 456.

September 21, 1917, J. F. Blain to W. L. Capps: "* * ships covered by the requisitioning order *" page 457.

September 22, 1917, F. T. Bowles to Egil Johnsen: "Requisitioned hull * *" page 458.

September 22, 1917, F. T. Bowles to B. Stolt-Nielsen: "Requisitioned hull * *" page 459.

September 22, 1917, W. L. Capps to J. Ringen: "* * vessels * * requisitioned *" page 459.

September 25, 1917, W. L. Capps to Skinner & Eddy Corporation: "* * requisitioned hulls * *" page 462.

September 29, 1917, Egil Johnsen to U. S. S. B. E. F. C.: "Requisitioned hull * *" page 465.

Other references of like character may be found on pages 466, 467, 469, 472, 475, 476, 479, 484, 485, etc.

Correspondence with the Northwest Steel Company and the Columbia River Shipbuilding Company, shipbuilders; with Mr. Willy Gilbert and others, shipowners; and representatives of shipowners.

August 17, 1917, Emergency Fleet Corporation to Columbia River Shipbuilding Co.: "* * requisitioned ship * *" page 495.

August 22, 1917, W. L. Capps to J. F. Blain: "* * vessels * * requisitioned * *" page 495.

September 14, 1917, J. F. Blain to Columbia River Shipbuilding Co.: "* * requitioned ships." page 500.

September 22, 1917, J. F. Blain to W. L. Capps: "* * requisitioned ships." page 502.

October 2, 1917, Northwest Steel Co. to E. N. Hurley: "* * commandeered boats * *" page 505.

October 3, 1917, W. L. Capps to Willy Gilbert: "* * requisitioning * * vessels *" page 505.

October 3, 1917, J. F. Blain to Columbia River Shipbuilding Co.: "* * requisitioned ships." page 506.

October 11, 1917, W. L. Capps to Columbia River Shipbuilding Co.: "* * requitioned ships * *" page 506.

October 23, 1917, F. T. Bowles to Columbia River Shipbuilding Co.: "* * requisitioned vessels. * *" page 508.

Other references of like charnacter may be found on pages 510, 511, 512, 517, etc.

c. THE VARIOUS STATEMENTS QUOTED NOT HEARSAY BUT RES GESTAE.

1. The officers of the Fleet Corporation and the Shipping Board were charged not only with the duty of making formal requisitions but with the continuing duty of carrying these requisitions into operation. We have no quarrel with the assumption of the Norwegian Case that what these officers did in this latter behalf may properly be considered upon the question as to what they requisitioned, but if what they *did* in this respect may be thus considered, what they *said* in connection with what they did is also pertinent and material evidence of like persuasive character, since their statements accompanying and qualifying their acts are not mere recitals of past events, but are parts of the *res gestae*—in the nature of "verbal facts." The statement that one *has done* such and such a thing relates to the past and is mere hearsay. A statement that one *is doing* such and such a thing deals with the present and is itself an integral part of the act.

2. The Supreme Court of the United States, in *Beaver* v. *Taylor*, 68 U. S. (1 Wall.) 637, had under consideration the question as to whether certain entries in an account book and certain letters were admissible as explanatory of the payment of taxes and the receipts for such payment. The court said:

"It was proper for the agent to transmit the receipts to his principals. What was said and done in that connection was a part of the *res gestae*. The contents of the accompanying letters relative to the receipts are within the rule upon that subject. The entries in the books of Taylor & Davis, after the receipts came to hand showing their action, were admissible for the same reasons. Both the letters and entries belong to the same category with what are called 'verbal facts,' and neither fall within the rule which excludes '*res inter alios acta*,'—hearsay and declarations made by the party offering them in evidence. The principal fact was the transmission of the receipts. The other facts so illustrate and characterize it, as to constitute the whole one transaction, and render the latter necessary to exhibit the former in its true light and give it its proper effect."

3. Payment to the shipbuilders of amounts corresponding to those stipulated in the contracts and adoption of the terms of the contracts for the purpose of defining the duty of the builders lose the probative force claimed for them by the Norwegian Case in the clear light furnished by the contemporaneous statements of the officials, showing that these amounts are adopted from the contracts only as a convenient and fair measure of the statutory liability to pay just compensation and these terms are followed only as a short and convenient method of indicating to the builders precisely what they are required to do. Such references to the contracts no more constitute an appropriation of the contracts than an order fixing the exact sum of money to be paid as just compensation and setting forth the details of the work to be done without reference to the contracts would constitute such an appropriation if it should turn out that such sums and such details coincide precisely with the stipulations in the contracts. The effect in both cases is the same. In either case it is the *language* which is appropriated, not the *contract*,—in one case, by repetition, and in the other, by reference.

There is a striking illustration in point to be found in the Criminal Code of the United States, where Congress, in order to avoid a lengthy description of offenses committed within places subject to the exclusive jurisdiction of the United States, adopted the laws of the various states and territories by simple reference, declaring that whoever commits or omits any act,

"which if committed or omitted within the jurisdiction of the State, Territory, or District in which such place is situated, by the laws thereof now in force would be penal, shall be deemed guilty of a like offense and be subject to a like punishment; and every such State, Territorial, or District law shall, for the purposes of this section,

continue in force, notwithstanding any subsequent repeal or amendment thereof by any such State, Territory, or District."[1]

This was of course merely a labor-saving device for saying in a sentence what otherwise would have required many pages of detailed definition, but it did not recognize any power in the state or territory to legislate for the United States, nor proceed upon the theory that the state and territorial legislation by being thus adopted came into operation *ex proprio vigore*. When these laws thus adopted by reference were enforced, they were enforced purely as laws of the United States and they possessed no sanction whatsoever by reason of being also laws of the states and territories. In the case now before this honorable Tribunal, the payments were made to, and the terms imposed upon, the shipbuilders under and in pursuance of the statute law and were enforceable under the statute law alone, deriving no authority from the contracts.

d. CONCLUSIONS.

The facts set forth and analyzed in the foregoing discussion of the terms and intent of the requisition order together with the documentary references to it admit of no conclusion other than that the shipbuilding contracts were not requisitioned. If the contention of the Norwegian claimants to the contrary were correct, it is most remarkable that somewhere in the voluminous correspondence on the subject there is not found some statement or acknowledgment to that effect; but over and over again, and we think without exception, in answer to statements asserting or suggesting the contrary, the officials of the Shipping Board and the Fleet Corporation have categorically denied that this was the effect or intent of their action. It is still more remarkable, if the Norwegian contention be correct, that in the mass of correspondence dealing indirectly with the question there should be found again and again affirmative language excluding the idea of contract requisition and nothing worth the slightest consideration which suggests the contrary.

We come now to a discussion of the acts and conduct of the United States officials which are relied upon by the Norwegian claimants in support of their theory and which we confidently submit will be found no less impressively to sustain the position of the United States.

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[1] U. S. Criminal Code, Sec. 289.

IV. The Practical Construction of the Requisition Order—Acts.

a. THE UNITED STATES DID NOT REQUISITION ALL SHIPS COVERED BY CONTRACTS.

1. It is asserted in the Norwegian Case that the United States requisitioned not only every partly constructed ship in the yards but applied its order to cases where construction had not even been entered upon. The fallacy of this contention is easily exposed. Admiral Capps, as early as August 9, 1917, in response to an inquiry from District Officer Blain as to whether the order applied "to ships contracted for but not actually under construction but in course of fabrication", said:

"Reference your wire August 9 commandeer order applies to ships contracted for in case material orders have been placed which cannot be cancelled." [1]

2. Admiral Bowles, representing the United States, on August 17, 1917, at a conference with the shipbuilders, made substantially the same statement, viz.: that "construction of a vessel would be considered as begun when any commitments of material have been made." [2]

3. It will be seen, therefore, that the word "ship" was used to include a *res* separate from the contract, and this *res* was held to exist wherever an irrevocable commitment for materials for use in building the ship had been made. The Norwegian contention thus falls to the ground, since it appears that the order did not apply to shipbuilding contracts but only applied where there existed a distinct *res* apart from the shipbuilding contract.

b. THE UNITED STATES DID NOT REQUISITION ALLEGED SHIPS COVERED BY "BARE" CONTRACTS.

1. It is contended by the Norwegian claimants that the Shipping Board requisitioned every contract existing on August 3, 1917, for the building of a ship, or, in other words, that "bare contracts" were taken where not even a beginning had been made toward the building of a vessel. To use their language: "The word [vessel]

[1] U. S. Counter-case, pages 46–47.
[2] U. S. Counter-case, page 47.

is simply a term to cover the contract to build the vessel."[1] This contention seems to be based upon the fact that in many instances keels had not been laid. This fact, however, is not important; certainly it is not controlling. Materials for a ship may be assembled and parts of a ship fabricated long before the keel is laid. The order was interpreted as applying to, and was in fact applied to, situations of this character.

(1a) The Brill report, for example, shows that the keel for hull No. 87, involved in claim No. 1, was not laid until October 6, 1917, but that the ship was 33.1 per cent complete on August 3, 1917.[2] On this latter date the report shows that 94 per cent of the hull material had been received and 4 per cent fabricated; 25 per cent of the engines and 4 per cent of the boilers had been built.[3]

(1b) The Norwegian Counter-case itself recognized the slight importance to be attached to the laying of the keel. In the sworn statement of Mr. Reimann, submitted by the Norwegian claimants as evidence in their case, it is said:

> "I understand that the keel had not been laid by August 1, 1917, but consider this fact of little importance, as a ship may be far advanced and considerable work and capital placed in her before the keel is actually laid."[4]

2. At page 116 of the Norwegian Case, it is asserted that the order was applied to the New Jersey Shipbuilding Company although the Shipping Board "knew that no ships were actually building." It is true that the case of the New Jersey yard ships was an extreme one. Nevertheless, even here material orders had been placed which could not be cancelled and there was a *res*, distinct from the contract, which was requisitioned. The formal requisition order to the New Jersey yard was issued on October 19, 1917. Three days prior thereto, the General Manager of this company advised the Fleet Corporation that contracts had been made for the building of eight steamers, and added:

> "We have also committed ourselves for the steel for four more steamers, * *. At the present time no yard work has been done on material. Classification, drawing, etc., are well advanced."[5]

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[1] Norwegian Case, page 115.
[2] U. S. Counter-case, page 48.
[3] U. S. Counter-case, page 48.
[4] Norwegian Counter-case, Appendix, page 144.
[5] U. S. Case, Appendix, page 249.

On October 19, the very day the formal requisition order was issued, District Officer Grogan advised the Fleet Corporation that "New Jersey Shipbuilding Company's hulls one to eight, inclusive, come under requisition order August third."[1] This is an expression of opinion by an officer who presumably had been informed of Admiral Capps' interpretation of what a ship under construction was. It was with this information before it that the formal requisition order was issued on October 19 to the New Jersey Shipbuilding Company.

In addition to this, in a letter dated April 16, 1919, Captain C. Frölich Hanssen, then Managing Director of the Pusey & Jones Company, said with reference to one of the eight hulls mentioned above:

"The first hull steel was ordered June 26, 1917, * * and up to July 25, 1917, 1309 tons had been ordered, * *."[2]

In the Brill report it is shown that prior to August 3, 1917, a blanket order had been placed for 82½ per cent of the steel for these hulls.[3]

It further appears that prior to August 3, 1917, orders had been received by the Carnegie Steel Company for steel for the construction of hulls 201 to 206, inclusive.[4]

It is thus demonstrated that when the formal requisition order was issued, and even as early as August 3, 1917, there was, entirely apart from the contract for the construction of the New Jersey hulls, a separate *res* in each case to which the order was applicable. In this connection we call attention to an inadvertence in the statement of the Norwegian Case. At page 116 it is said:

"The Shipping Board directed its District Officer to investigate the situation and report whether these *contracts* should be requisitioned."

Referring to Admiral Bowles telegram to District Officer Grogan, dated October 18, 1917, it will be seen that the direction which Admiral Bowles gives is:

"Ascertain if *hulls* one to twelve inclusive New Jersey Shipbuilding Company are subject to requisition order of August third."[5]

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[1] U. S. Case, Appendix, page 250.
[2] U. S. Counter-case, Appendix, page 238.
[3] U. S. Case, Appendix, page 585.
[4] U. S. Counter-case, Appendix, page 421.
[5] U. S. Case, Appendix, page 250.

It is unfortunate that in a connection so critical the word "contracts" should be substituted for the word "hulls."

We emphatically deny that the requisition order was applied to "bare contracts." The record will show that in all cases there was or was believed to be a *res*, separate and apart from the contract, to which the order applied. There are instances, to be sure, where it was discovered that only contracts existed, but in such cases the Board officials expressly held that the order did not apply.

c. THE FLEET CORPORATION DID NOT MEASURE THE RECIPROCAL OBLIGATIONS OF THE CORPORATION AND THE SHIPYARDS BY THE CONTRACTS IN FORCE ON AUGUST 3D.

In its endeavor to show that contracts were requisitioned, the Norwegian Case, referring to the Fleet Corporation, makes the following assertion:

"In each case it made the contract the measure of the reciprocal obligations between it and the yard under the requisition."[1]

This assertion is refuted by practically every fact in the history of the requisition. The record abounds in evidence that the Fleet Corporation did not in each case use the contracts in force at the date of requisition to measure the reciprocal obligations between the Fleet Corporation and the shipbuilder.

1. In the first place the United States did not want the contracts. Its requisition program as already shown was planned with the definite purpose of excluding contracts from the requisition order. It did not want to measure its obligations to the shipbuilder or the shipbuilder's obligations to it by the terms of the contracts in existence at the time of the requisition. This fact has been passed upon by the courts of Norway. The Town court in its judgment in the Case of Bestum II said:

"The contract was not acquired in such a manner that the American Government assumed outright the rights and obligations thereunder in the same manner as the person to whom the contract might have been assigned under a general voluntary assignment. *For the contract with its various special stipulations did not exactly answer that which was aimed at by the requisition.*"[2]

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[1] Norwegian Case, page 4.

[2] U. S. Counter-case, Appendix, page 405. Italics ours.

The Norwegian court could have gone further in its statement. The contracts did not answer at all the purpose which was aimed at by the requisition.

2. That the contracts did not answer the purpose of the requisition is shown by the fact that the Fleet Corporation made new contractual arrangements of its own. In many cases these arrangements bore scarcely a vestige of resemblance to the contracts that were in existence on August 3, 1917. In illustrating the fact that the assertion in the Norwegian Case is wholly unfounded it is well to use a case involving one of the shipbuilders concerned in the Christiania claims.

(2a) The Columbia River Shipbuilding Company was the builder of hull No. 2, which is covered by Claim No. 6. On August 3, 1917, there was no contract between the Columbia River Shipbuilding Company and the D/S A/S Lott, Willy Gilbert, Leif Erichsen, A/S Sverre Hanssen, Christoffer Hannevig, or any other Norwegian former owner. The original contract was between Willy Gilbert and the Northwest Steel Company. The Columbia River Shipbuilding Company was building the ship under a contract which it had with the Northwest Steel Company and not with the Norwegian purchaser.

The Emergency Fleet Corporation refused to recognize in any way the contract between the Norwegian owner and the Northwest Steel Company.

The contract between the Northwest Steel Company and the Columbia River Shipbuilding Corporation was not used as a measure of reciprocal obligations, but an entirely new and distinct contract was entered into with the shipbuilder for the completion of the requisitioned ship. This was a very elaborate and formal contract. It is printed in full in the United States Case, Appendix, at page 516. The United States invites comparison between this contract as made by the Fleet Corporation and the original contract as made between Willy Gilbert and the Northwest Steel Company. The two contracts are strikingly unlike each other. The original contract was a fixed price contract, with a lump sum price for the ship. The contract made by the Fleet Corporation was a cost plus contract with a fixed fee for profit.

(2b) Another overwhelming refutation of the assertion made in the Norwegian Case is afforded by contract No. 518 between the Fleet Corporation and the Chester Shipbuilding Company. This contract covered the completion of 28 requisitioned ships. The original contracts with former owners were disregarded, and entirely new and different terms and conditions agreed upon.

The fourteen Hamilton ships which are covered in detail in the Counter-case of the United States were included in contract No. 518. As an evidence that the original contracts in force on August 3, 1917, were not used to measure reciprocal obligations, attention is called to the fact that on these fourteen contracts the prices under the contract—518—averaged $10.80 per deadweight ton less than the original contract price. The aggregate for the fourteen ships was $1,360,800 less than the original contract price.[1]

(2c) New contracts were made covering the four ships contracted for with the New Jersey Shipbuilding Company and involved in the Christiania claims. The measure of reciprocal obligations was not the contracts in force on August 3, 1917, but the new contract of December 26, 1917, which changed the four ships and a number of other ships from a lump sum contract basis to a cost plus fixed fee basis. This contract is printed in the U. S. Case Appendix, at page 300.

(2d) It is a matter of surprise that the Norwegian Case should make such a baseless assertion as that which is under discussion, particularly as so many of the ships involved in the Christiania claims were known to be covered by formal contracts made by the Fleet Corporation and the shipbuilder to establish a reciprocal obligation. Another example is given in the cases of hulls 92 and 95 built by the Seattle Construction & Dry Dock Company. These vessels were completed, not under the terms of the original contract, but in accordance with the contract between the Fleet Corporation and the shipbuilder under terms that bore no resemblance to the original contract.[2]

3. It is asserted further by the Norwegian Case that "the Shipping Board enforced the contracts against the yards."[3] This assertion is

[1] U. S. Counter-case, Appendix, pages 139 and 164.

[2] U. S. Case, Appendix, pages 438, 440, and 441. See also discussion under the heading "The United States entered into new contracts with the shipyards," post page 49.

[3] Norwegian Case, page 116.

made in the form of a sub-heading in capitals, but the most cursory examination of the discussion in the Norwegian Case itself which follows demonstrates the utter lack of foundation for the statement. In support of it, attention is called to a statement made by Admiral Bowles in a hearing before the Committee on Commerce of the United States Senate. In the course of that statement Admiral Bowles said that from the number of contracts involved it appeared to be impossible to examine each contract and arrange a method of compensation based upon such examination. A letter was therefore issued to the shipbuilders offering *as a reasonable price* for the completion of the work an amount equal to the payment provided for in the contract and not yet made. He then proceeds:

"In other words, the corporation decided that it would be paying just compensation to the shipbuilders if it paid them an amount equal to the amount remaining unpaid under the contracts under which the ships were being constructed. Of course this was an arbitrary and wholesale way of establishing compensation to the shipbuilders——

"Senator Nelson. But they got under that plan all they were entitled to under their contracts?

"Admiral Bowles. They got every cent that they had expected to get. Of course various plans were considered by us for establishing this compensation, and you will recognize that under the law of eminent domain it might have been necessary for us, pursuing the usual methods, to appraise the vessel as of August 3, and then establish what the value was then, what the shipbuilder had received, and what was due him for the completion of that ship; and I was urged by some of those whom I had associated with myself in this work that that must be done. But I felt that if I attempted to do that all over the United States, in about 431 contracts, and applied what might be called an ordinary method of compensation to the shipbuilders, I would have at least a third of them in bankruptcy before we really got started. Therefore this method was adopted, and within a very short time had been accepted by a large majority of the shipbuilders."[1]

It is quite evident that this plan for making payments was adopted as a ready method of fixing just compensation and that the payments were made not under the contracts or in recognition of any contract liability but solely in discharge of the statutory liability to make just compensation.

Again, the Norwegian Case refers to a letter of Admiral Capps, sent out on August 22, in the course of which he directs that the work of completion shall proceed "in conformity with the requirements of the contract, plans and specifications under which construction pro-

[1] Norwegian Case, page 117.

ceded prior to the requisition of August 3rd," but this is followed by the qualifying language "in so far as the said contract describes the ship," etc., and by the more important qualifying language "and in so far as the contract contains provisions for the benefit and protection of the person with whom the contract was made, *but not otherwise*."[1] It will be observed that the order contained in this letter is made in the name of the President of the United States, which indicates clearly that the Corporation regarded its position as authoritative only by reason of the provisions of the Emergency Shipping Fund Provision. It is also to be noted that the ships are to be completed in accordance with the terms of the contract "in so far as the contract contains provisions for the benefit and protection of the person with whom the contract was made, but not otherwise." If the Shipping Board was proceeding upon the theory that the contracts were requisitioned it necessarily followed that they as well as the shipbuilder were bound by the terms of the contract, and it would have been altogether inadmissible to direct the shipbuilding company to comply with the conditions of the contract only in so far as they were for the benefit and protection of the person with whom the contract was made. That would be to adopt the benefits and reject the obligations, which would only be admissible upon the view that the terms of the contract were referred to merely as a convenient means of instructing the shipbuilder what he was to do. In legal effect it was precisely as though these various terms had been set forth in the letter of instruction and the shipbuilder directed to comply with them without any reference to the contract at all. It was a time, as everybody knows, when the utmost haste was essential. The submarine was gaining upon the shipyard. Instead of wasting time drawing new specifications, the Corporation adopted this shorthand method of instructing the shipbuilder, pending a final arrangement which could be made as time permitted without interfering with the prompt construction of ships which were so badly needed.

4. Again, it is stated in the letter that the Corporation will pay to the shipbuilder "amounts *equal to* payments set forth in the contract and not yet paid," not, it will be observed, "amounts due under the contract", or "amounts set forth in the contract." The thought

[1] Norwegian Case, page 119. Italics ours.

which Admiral Capps had is admirably stated by Admiral Bowles in the course of his statement already quoted.[1]

"*In other words, the corporation decided that it would be paying just compensation to the shipbuilders if it paid them an amount equal to the amount remaining unpaid under the contracts under which the ships were being constructed.*"[1]

At page 121 of the Norwegian Case, Admiral Capps' letter of September 25, 1917, to Skinner & Eddy, which is evidently a form letter, is quoted. In the course of that letter, which is significantly headed "in re: requisitioned *vessels*," he says:

"As just compensation for and as the reasonable price of such completion the corporation will pay to you sums equivalent to amounts which were unpaid on the said contracts August 3, 1917."

We have already discussed the significance of this language,[2] and it is only necessary to add that this language bears out the inference which we have drawn from Admiral Capps' letter of August 22 and the statement of Admiral Bowles, namely, that there was not the slightest intention to recognize that the contracts had been requisitioned or that there was any liability under these contracts either on the part of the corporation or the shipbuilder. Their terms were simply adopted for the time being, as a formula for measuring the statutory duty of the shipbuilder and the liability of the corporation for just compensation.

At page 122 of the Norwegian Case is cited the last documentary evidence presented by Norway in support of the statement that the contracts were enforced against the yards. That is a statement on the part of the law officers of the Shipping Board, in the course of which it is said:

"By virtue of these orders, it also became obligated (a) to pay to the persons entitled thereto just compensation for the property requisitioned, and (b) to make just compensation for the further work ordered to be done for its account."

Evidently in the opinion of the law officers the obligation of the Fleet Corporation was not under the contracts but under the statute, since the phrase "just compensation" is appropriate in describing the statutory liability and wholly inappropriate when applied to the contractual liability.

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[1] Ante, page 45. Italics ours.
[2] Ante, page 37.

5. It must be borne in mind that the material, equipment, and outfit for these ships under construction must have been ordered to meet the requirements of the specifications and the terms of the contracts. It was therefore to be expected that the Fleet Corporation would adopt these terms and specifications in providing for the completion of the ship, since otherwise it would have been difficult and expensive and perhaps in some cases impossible to use them in accordance with different terms and specifications. Nevertheless, the Fleet Corporation did in some instances require substantial changes to be made.[1] In Admiral Capps' letter of August 16, 1917,[2] it is stated "Items marked (*) must be carried or provided on every ship." These items include accommodations for gun crew, searchlight, gun foundations, magazines, etc. The changes were ordered without negotiation, a course which could not have been taken under the terms of the contract which require an agreement in advance respecting the cost of the changes before such changes would become effective.[3]

Authority for such orders, however, is to be found in the statute. It is evident that the Corporation acted in directing these changes under its statutory authority and not under the provisions of the contract.[4]

(5a) At page 122 of the Norwegian Case, Professor J. Russell Smith is quoted to the effect that the Shipping Board held the shipyards to the contracts. What opportunities Professor Smith had for observing the activities of the Fleet Corporation does not appear, but in any event it would not seem that an inference drawn from his bare statement would be sufficient to overcome the positive evidence which we have cited in such volume to the effect that the contracts were not requisitioned.

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[1] Ante, page 31.

[2] U. S. Case, Appendix, pages 215 to 219.

[3] See for example contract with reference to Hull No. 87: "* * * but the foregoing shall not operate to prevent alterations, * * * if required from time to time by the purchaser,—providing the same shall be specified in writing and the extra price * * * mutually agreed upon in writing." U. S. Case, Appendix, page 594.

[4] See letter of F. T. Bowles, Manager of Construction Division, to Northwest Steel Co., September 21, 1917, in which Mr. Bowles said:

"You apparently are under a fundamental misconception of your present position. You do not seem to appreciate the fact that you are under a direct order of this Corporation, acting as the agent for that purpose, of the President of the United States, to complete the ships in your yard which were under construction August 3d, 1917. By the provisions of the act of June 15th, 1917, compliance with all such orders is obligatory and takes precedence over all other orders and contracts. If you proceed with the completion of these ships this Corporation is under statutory obligation to pay you just compensation." U. S. Case, Appendix, page 501.

(5b) At page 123 of the Norwegian Case, there is a quotation from Mr. Hurley's book to the effect that an order was issued as of August 3, 1917, requisitioning hulls and ship materials in American yards. This statement is followed by a sentence which in the Norwegian Case is printed in italics:

"*The order applied to foreign as well as domestic contracts.*"

Just how this could be tortured into a declaration that contracts were requisitioned it is difficult to understand. Obviously, all that Mr. Hurley meant was that the order requisitioning hulls and ship materials applied not alone in the case of domestic contracts, but in the case of foreign contracts also.[1]

d. THE UNITED STATES ENTERED INTO NEW CONTRACTS WITH THE SHIPYARDS.

At page 126 of the Norwegian Case, there is the following statement:

"It is admitted that the Shipping Board got all the benefit of the contracts. It carried out the contracts. It proposed to step into the shoes of the owners of the contracts. It proposed to make reimbursement to the owners of the contracts for what had been paid to the yards and to pay the yards the balance of the contract prices for finishing the vessels. It proposed to hold the yards to the contract price and to the plans and specifications."

We have already discussed the effect of the action of the officials of the United States in adopting the amounts stipulated in the contracts as a measure of just compensation and of the terms of the contracts in certain particulars as a convenient method of pointing out the things to be done by the shipbuilders. It was, however, only a partial adoption of these amounts and of these terms. We have shown that this adoption cannot be construed as an appropriation of the contracts. But it was recognized in many instances that the amounts stipulated in the contracts did not come up to the measure of just compensation, and that the terms of the contracts did not describe the extent or character of the work which it was desired should be done. Therefore, in these cases, in addition to the informal directions which were given, formal and sometimes elaborate con-

[1] See in this connection Mr. Hurley's letter of October 17th, 1918, quoted supra, page 28.

tracts were entered into between the Fleet Corporation and the shipyards.[1]

1. At page 300 of the United States Case, Appendix, will be found a letter from the New Jersey Shipbuilding Company, bearing date of December 26, 1917, confirming the agreement of that company with reference to vessels 201 to 212, inclusive, to the effect among other things that the price of the vessels should be "the actual cost, together with a profit of $17.50 per deadweight ton. If, however, the cost of the ships, including the above profit, is less than $175.00 per deadweight ton, * * we are to have one-half share in the savings." Here is a complete recognition that the original contracts for the construction of these ships were not requisitioned, and a new and entirely different contract was entered into.

2. At pages 28 to 30 of the United States Counter-case, Appendix, will be found a letter from the Fleet Corporation to the Pennsylvania Shipbuilding Company, with reference to the completion of hulls 15 to 18, inclusive, in the course of which it is stated that "the just price and reasonable compensation which the Emergency Fleet Corporation shall pay to you for completing hulls No. 15 to 18, inclusive, shall be actual cost, together with a profit of $204,000.00 for each vessel." Then follow details in elucidation of the meaning of actual cost. Here again is a clear recognition that the original contracts had not been requisitioned and that the amounts stipulated to be paid under these contracts did not constitute a proper measure of just compensation, which was, therefore, made the subject of an express agreement.

In other cases more formal and elaborate contracts were entered into.[2]

3. At page 140 of the United States Counter-case, Appendix, will be found a copy of an elaborate agreement between the Fleet Corporation and the Chester Shipbuilding Company, fixing just compensation for twenty-eight vessels, five of which had been completed, and twenty-three then in various stages of completion.

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[1] Ante page 43.

[2] See for example, the contract between the Columbia River Shipbuilding Corporation and the Fleet Corporation, U. S. Case, Appendix, pages 516 to 530, which seems to cover every phase of a shipbuilding contract. This contract related to ten vessels under construction on August 3, 1917, known as hulls No. 1 to 10, inclusive, hull No. 2 being the subject of Claim No. 6, in the instant case.

Other cases are collected in the note.[1]

An examination of these various contracts will disclose that provisions differing essentially from those contained in the original contracts were made on the subject of (a) plans and specifications, (b) cost of construction, (c) treatment of labor in the matter of wages, hours, and conditions of employment, and (d) providing for the submission of disputes to the Vice President of the Emergency Fleet Corporation, whose decision was to be final and binding, except as to certain things specified.[2]

e. PROGRESS PAYMENTS NOT REQUISITIONED.

Former owner payments to shipbuilders were not taken by requisition, but came to the credit of the Emergency Fleet Corporation as an incidental consequence of the requisition order. The order itself, both from its own terms and the established intent, covered only ships under construction and materials assembled, therefor or ordered and allocated to these ships.

To a large extent in some cases and to the entire extent in other cases, the property requisitioned was represented by the progress payments already made to the shipbuilder. Aside from possible enhancement in value of materials between their purchase and August 3, 1917, the progress payments measured the maximum of ownership rights held by the contract owners in the things requisitioned. In some instances the progress payments had been entirely transmuted into work in process; in other cases they had been used in varying

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[1] For the communications from the various shipbuilders accepting the statutory orders of the Fleet Corporation and agreeing to complete the hulls and to deliver to the Corporation a bill of sale on completion, see the U. S. Case, Appendix, at the pages indicated:

Pusey & Jones Company, pages 227 and 241;
New Jersey Shipbuilding Company, page 262;
Manitowoc Shipbuilding Company, page 376;
Seattle Construction & Dry Dock Company, page 408;
Skinner & Eddy Corporation, page 450;
Columbia River Shipbuilding Corporation, page 510.

In the case of the New Jersey Shipbuilding Company, the Seattle Construction & Dry Dock Company, and the Columbia River Shipbuilding Corporation, formal contracts were entered into in addition to the agreements on the part of these companies to accept and execute the statutory order of the Corporation for these contracts. See pages 300, 438, and 516, respectively.

For the resolution of the Board of Trustees of the Fleet Corporation awarding just compensation to the Pusey & Jones Company, March 13, 1920, see U. S. Case, Appendix, pages 345–350. See also, resolution of the United States Shipping Board, June 9, 1920, conferring power upon the Emergency Fleet Corporation in the premises, U. S. Case, Appendix, page 693.

[2] See also the discussion under the heading "The United States did not measure the reciprocal obligations of the corporation and the shipyards by the contracts in force on August 3," ante page 42.

degrees to pay for materials bought or work done, and in still other cases they had not been used to pay for any delivered materials, but might be said to represent the materials under commitment.

Because of this close relationship between the progress payments and the things requisitioned, a natural result of requisition was that the progress payments were credited by the shipbuilders to the Fleet Corporation. Regardless of the extent to which the payments had been converted into work in process, they expressed in terms of money the approximate value of the 'congeries of wood and iron' which Mr. Burling has said is all that was requisitioned and all that should be evaluated.

f. REBUTTAL OF SPECIFIC MISSTATEMENTS RELATING TO THE ALLEGED REQUISITION OF CONTRACTS.

The Norwegian Case shows a careless disregard for patent facts which makes it necessary for the United States to submit refutations which should not have a place in the arguments before this Tribunal. The introductory paragraphs in the Norwegian Case are noteworthy because of the many assertions made in direct conflict with established facts. Many of these assertions are belied by the Norwegian Case itself.

One instance where the Norwegian Case declares a thing is true and then produces evidence to prove that it is not true is given by the case of hull No. 214, which on August 3, 1917, was under contract between the Newport News Shipbuilding & Dry Dock Company and the Ocean Steamship Company. In its introductory paragraphs the Norwegian Case makes the following declaration:

"It required every shipbuilding contract for a power-driven ship above 2500 deadweight capacity which was in existence on the date of the requisition to be carried out."[1]

After this assertion, which was contrary to the facts, the Norwegian Case shows that on August 3, 1917, there was a contract for hull No. 214 with the Newport News Shipbuilding & Dry Dock Company. The case then proceeds at some length to show that the contract for hull 214 was not carried out.[2]

However even in its admission that the contract for hull 214 was not carried out the Norwegian Case attempts to make it appear that

[1] Norwegian Case, page 4.
[2] Norwegian Case, pages 144, 145 and 146.

the contract was requisitioned. The facts are that the contract was not only never carried out, but it was never requisitioned. This is shown conclusively in the United States Counter-case, Appendix, pages 176 to 185. On September 14, 1917, W. L. Capps, General Manager of the Fleet Corporation notified the Newport News Shipbuilding & Dry Dock Company as follows:

"Hull No. 214—Freight and passenger vessel for Ocean S. S. Company of Savannah.

"Gentlemen: You are hereby informed that the above described Hull and the materials therefor are not within the order of August 3, 1917, requisitioning ships under construction in your Yard, *for the reason that no actual construction work has been commenced and no sufficient quantity of materials were on hand to justify the conclusion that the said Hull might be considered under construction as of said date.*"[1]

Attention is called to a formal contract printed in full in the United States Counter-case, Appendix, showing that hull 214 was never built and that the contract for this hull was never carried out, and showing also that the hull was never requisitioned.[2]

Other ships which the Fleet Corporation refused to requisition were hulls Nos. 80 and 81 covered by contracts between R. Lawrence Smith and the Hanlon Dry Dock & Shipbuilding Company. The facts concerning these two contracts are shown in the United States Counter-case, Appendix, which, among other things, contains a letter from the General Counsel of the Fleet Corporation regarding contracts with Hanlon. That statement concluded with the following:

"He has two other contracts with Smith & Lind for other steel ships, but as these were not actually under construction our division has ruled that they were not requisitioned."[3]

The foregoing has shown the baselessness of the assertions quoted, even when the application of the assertion is limited to the actual building of ships. The assertion is wholly untrue if it is intended to mean that every shipbuilding contract for a power-driven ship above 2,500 tons deadweight was required to be carried out. None of the contracts was carried out. As already explained elsewhere new contracts were made where ships were requisitioned.

[1] U. S. Counter-case, Appendix, page 178. Italics ours.
[2] U. S. Counter-case, Appendix, pages 180 to 185.
[3] U. S. Counter-case, Appendix, page 446. See U. S. Counter-case, pages 50–51.

Another assertion of the Norwegian Case which is contrary to the facts was the following:

"It held the yard to the performance of contract requirements at the contract price."[1]

It is difficult to understand how the authors of the Norwegian Case escaped the knowledge that the requisitioned ships were not completed by compelling performance of the contract requirements at the contract price. It is a notorious fact that ships requisitioned at the shipbuilding plants of the Hannevig companies were not built at the contract prices in force on August 3, 1917. New contractual relationships were entered into with new terms. While no definite settlement has yet been made with the shipbuilder for the six completed Pusey & Jones and New Jersey Shipbuilding Companies' ships involved in the Christiania Group claims, the offer made by the Fleet Corporation in settlement contemplates an entire departure from the prices alleged to have been in effect on August 3, 1917. As was well known to everyone in interest, unless it be the authors of the Norwegian Case, and as they are now doubtless informed by the Case of the United States, the award made to the Pusey & Jones Company disregarded the original contract price. It included special allowances for depreciation and amortization amounting to $2,875,000.[2] This alone, if distributed over all the Pusey & Jones ships would average over $11 per ton on the contract price.

As shown in the record produced by the United States Case, Appendix, the Columbia River Shipbuilding Company was not held to the contract price, but was allowed full cost plus $132,000 as a fee.

As shown by contract No. 518 with the Chester Shipbuilding Company the shipbuilder and the Fleet Corporation had a new contract which in the case of the 14 Hamilton vessels was very much less than the contract price in force on August 3, 1917.

The statement that the yards were held to the contract prices is so far from the facts that it seems needless to spend any further time in refutation.[3]

The So-Called Hurley Settlements.

The Norwegian Case makes the following assertion:

"We say since the autumn of 1919 because in all settlements with owners of requisitioned tonnage before that time, while Mr. Hurley

[1] Norwegian Case, page 4.
[2] U. S. Case, Appendix, page 345 at 349.
[3] See also ante, page 42 et seq.

remained Chairman of the Board, the basis of settlement was full reimbursement including premiums paid for contracts in excess of the contract price."[1]

This quoted statement gives the impression that all settlements made by the Hurley Administration included resale premiums. This is not true. The Mitsui settlement has been cited by the claimants as an example of the character of the settlements made by the Hurley Administration. This particular settlement involved hull No. 9 built by Skinner & Eddy Corporation. This vessel was first named "*James H. Fox*," later "*Maru No. 2*" or "*Nikkosan Maru.*" The name was changed to "*Indiana*," and later to the present name, "*Western Front.*" The contract for this vessel was made July 3, 1917, between Mitsui & Co. Ltd. and Skinner & Eddy Corporation; the purchase price was $2,500,000. The sworn statement of the shipbuilder shows payments of $1,750,000.

Settlements with the former owners were made under date of July 21, 1919 at a time when Mr. Hurley was still Chairman of the Shipping Board.

This settlement reimbursed Mitsui & Co. for the $1,750,000 paid by the shipbuilder, and also made an additional allowance of $80,000, making a total payment of $1,830,000.

The significant feature of this settlement made by the Hurley Administration is that it excluded $475,625 for resale profits. Mitsui & Co. had sold the contract at a profit alleged to have been $475,625., but the Shipping Board refused to permit the transfer of the ship under a sale that was made after requisition, just as sales of the Christiania contracts were made after requisition.

Instead of departing from its policy in this case, the Shipping Board adhered strictly to the principle that sales after August 3, 1917, should not be recognized. This case is of particular interest as it shows how the Hurley Administration treated sales made after August 3, 1917, such as the sales to the Christiania claimants. The Hurley Administration refused to recognize a sale and refused to compensate Mitsui & Co. for loss of profits.[2]

The United States Counter-case, Appendix, contains abundant evidence that settlements were made which did not include reimbursement for resale premiums.

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[1] Norwegian Case, page 5.

[2] For a full discussion of the Mitsui settlement see infra, p. 95.

Another assertion in the Norwegian case is as follows:

"We know of no settlement by the Shipping Board on the basis proposed for settlement with the present claimants."[1]

The settlement of July 21, 1918 with the Pacific Transport Company for the "*Silverado*," hull No. 2, built by the Craig Shipbuilding Company was on a much less liberal basis than the one now proposed for the Christiania claimants. In that case the former owner received only $160,000 paid to the shipbuilder without any allowance for enhancement in the value of the materials.[2] This settlement was made by the Hurley Administration.

V. Settlements Made by the Shipping Board Do Not Affect the Position of the United States in this Case.

a. TERMS AGREED UPON IN ORDER TO SECURE AN AMICABLE SETTLEMENT DO NOT MEASURE THE LEGAL LIABILITIES OF THE PARTIES, EVEN IN A SIMILAR CASE.

The Norwegian Case and Counter-case assert that if the precedents afforded by settlements made by the Shipping Board with other claimants are followed, the present claims are justified. We shall in a moment point out, we think conclusively, that these settlements differ radically from the claims here advanced by the Norwegian claimants, but assuming the contrary for the sake of the argument, and only for the sake of the argument, we respectfully submit that what a party—whether a nation or a private person—does for the sake of buying his peace does not logically or justly establish a precedent, by which a liability *in invitum* can be measured, even though all the facts and circumstances are identical.

The settlements to which the Norwegian Case refers and which we shall next discuss in detail were all made as the result of negotiation and compromise. It is of the nature of such settlements that both parties yield their claims in greater or less degree in order to arrive at a settlement; it follows necessarily that there is involved in such a settlement neither admission nor presumption that the terms are just. As stated by an American author on the subject of eminent domain:

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[1] Norwegian Case, page 6.

[2] U. S. Counter-case, Appendix, pages 192 to 195.

"The rights of an owner to recover just compensation for the taking of his land are not to be measured by the generosity, necessity, estimated advantage, or fear or dislike of litigation which may have induced others to part with the title to their real estate, and it would be equally unwise, unjust and impolitic to make it impossible for a corporation which has taken land by eminent domain to compromise the claims of one owner without furnishing evidence against itself in the cases of all others who had similar claims."[1]

Another writer on the same subject says:

"What the party condemning has paid for other property is incompetent. Such sales are not a fair criterion of value, for the reason that they are in the nature of a compromise. They are affected by an element which does not enter into similar transactions made in the ordinary course of business. The one party may force a sale at such a price as may be fixed by the tribunal appointed by law. In most cases the same party must have the particular property, even if it costs more than its true value. The fear of one party or the other to take the risk of legal proceedings ordinarily results in the one party paying more or the other taking less than is considered to be the fair market value of the property. For these reasons such sales would not seem to be competent evidence of value in any case, whether in a proceeding by the same condemning party or otherwise."[2]

The courts in the United States have held we think without exception that an amount paid by way of compromise is wholly inadmissible as proof of values or damages. In *Howard* v. *City of Providence*, 6 R. I. 514, the appellant offered to prove that the city had paid certain sums of money in compromise of certain appeals from awards of damages for lands adjoining the appellant, taken for a street. The Supreme Court, passing upon the question, said:

"What the City paid other parties in compromise of suits pending on appeal for land damages, although the lands might be similarly situated with lands of the plaintiff's taken by the City, was certainly not evidence of the market value of the land, or of any substantial damage suffered by the plaintiff. Upon grounds of public policy, offers made in compromise of suits, pending litigation are not to be used in evidence against the party making them. 1 Greenleaf, Sec. 192. We do not see that such evidence ought to be any guide to the jury in estimating damages. When a party buys his peace or compromises a pending suit, many considerations may influence him; the trouble, vexation, and cost of a lawsuit, payment of counsel, time expended in attending litigation and other matters may induce him, for the avoiding of trouble, to pay in compromise far more than the value of the thing in controversy."

[1] Nichols, Eminent Domain, 2nd Edition, Vol. 2, page 1199.
[2] Lewis, Eminent Domain, 3rd Edition, Vol. 2, page 1145.

There are numerous cases to the same effect and none to the contrary, so far as our investigation has gone. See cases cited in Jones on Evidence, 2nd Edition, Sec. 169.

An offer to pay a certain sum by way of compromise "is no more than saying that so much will be given to get rid of the controversy." *Sanborn v. Nielson*, 4 N. H. 509.

A consideration, for example, of the Stray settlement, upon which apparently the Norwegian Case lays most stress, shows that the claimants and the Shipping Board had been negotiating for over a year. Both the basis of payment and the amount to be paid were matters in serious dispute. The final result was a compromise agreement. As the Norwegian Minister himself said in a communication to the State Department,

"By this agreement a compromise settlement was reached without any especially defined basis."[1]

In the instant case, the amount which should be awarded to the Norwegian claimants is neither what they are willing to receive nor what the United States is willing to pay, but it is what in the judgment of this honorable Tribunal ought to be paid as just compensation. Primarily this just compensation must be measured by the value of the things taken, and it is obvious that a sum paid and received in order to end a controversy is not a dependable measure of such value.

b. THE SETTLEMENTS RELIED ON BY THE NORWEGIAN GOVERNMENT ARE NOT SIMILAR CASES.

1. The Cunard Adjustment.

The Norwegian Government contends that "the Christiania Group claims are not distinguishable from the claims of the Cunard Company * * *,"[2] and that therefore the settlement amicably arrived at between the Cunard Company and the Fleet Corporation should be used by this honorable Tribunal as a criterion for awarding to the present claimants complete reimbursement. The United States admits that the Cunard Company was completely reimbursed.

[1] Mr. Bryn to Mr. Merle Smith, January 16, 1920. U. S. Counter-case, Appendix, page 128 at 129.

[2] Norwegian Counter-case, page 79.

(1a) FIVE POINTS OF DIFFERENCE BETWEEN THE CUNARD ADJUSTMENT AND THE CHRISTIANIA GROUP CLAIMS.

It is submitted, with due deference but with every confidence that there are points of difference between the claims of the Cunard Company and the claims of the Christiania Group entirely sufficient to overcome the argument of the Norwegian Government that the obligations of the United States to "certain Norwegian subjects," citizens of a friendly neutral, are to be measured by the terms of an adjustment with a co-belligerent sovereign government arrived at during war time, at a period when the United States was lending vast sums of money to this co-belligerent sovereign.

(1aa) The Claimants: A Co-Belligerent Sovereign vs. Individual Neutral Citizens.

The Norwegian Government presents the fifteen claims comprised in this arbitration "on behalf of certain Norwegian subjects."[1] The official documents of the Cunard adjustment clearly demonstrate that it was the British Government which was in fact concerned, the Cunard Company acting as the agent of the British Controller of Shipping. The fifth paragraph of the contract of January 30, 1918, states that "In all of the transactions between the Cunard Line and the shipbuilding companies or the owners of the contracts with these shipbuilding companies, the Cunard Line has acted solely as the agent of the Controller of Shipping."[2] The second paragraph of article III of the same contract states as follows: "The said Controller of Shipping represents and warrants that the Cunard Line is and has been his authorized and sole agent in the United States of America for the making and purchasing of said contracts for said ships."[3]

Furthermore, Sir Joseph Paton Maclay, Bart, Privy Counsellor, as British Controller of Shipping, and Sir Hardman Lever, K. C. B., as Financial Secretary to his Britannic Majesty's Treasury were parties to the agreement,[4] and the amount to be paid in settlement was agreed to be paid directly to the representative of his Britannic Majesty's Treasury.[5]

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[1] Norwegian Case, page 1.
[2] U. S. Counter-case, Appendix, page 91.
[3] U. S. Counter-case, Appendix, page 93.
[4] U. S. Counter-case, Appendix, pages 91 and 94.
[5] U. S. Counter-case, Appendix, page 92.

The testimony of Mr. Martin J. Gillen, as printed on pages 73 and 74 of the Norwegian Case, is to the same effect. Mr. Gillen speaks of "Cunard & Co., who represented the British Government," and "Cunard, representing the British Government."

(1ab) Rights Acquired Prior to Requisition vs. Claims Purchased Subsequent to Requisition.

A second point of difference is the fact that "*prior to August 3, 1917* the Cunard Line, as the agent of the controller of shipping, placed direct contracts for the construction of ships with certain American shipbuilders and purchased contracts for the construction of certain other ships under construction in American shipyards * *."[1] On the other hand, the present claimants in every case acquired *subsequent to August 3, 1917* such rights as they may be adjudged by this Tribunal to have.[2]

(1ac) Early British Ship Construction Contracts vs. Late Christiania Group Contracts.

A third point of difference is seen by a comparison of the dates of the ship construction contracts of the Christiania Group with those which the Cunard Company acquired by assignment. The approximate average date of the ship construction contracts which the Cunard Company acquired by assignment calculated from the dates as printed on pages 454 and 455 of the Appendix to the Countercase of the United States, is August 14, 1916. The approximate average date of the ship construction contracts of the Christiania Group, all of which were acquired by the present claimants by assignment, calculated from the dates as printed in the third column of the chart opposite page 161 of the Norwegian Case, is February 5, 1917. It is thus seen that the approximate average date of the ship construction contracts of the Christiania Group is, roughly, six months later than the approximate average date of the ship construction contracts which the Cunard Company acquired by assignment.

(1ad) A Bona Fide Desire to Secure Ships to Sail vs. an Apparent Desire to Secure Ships to Sell.

A fourth point of difference is the fact that the Cunard Company, representing the British Government, beyond any question of doubt

[1] Paragraph 2, Contract of January 30, 1918. U. S. Counter-case, Appendix, page 91. Italics ours.

[2] See Chart opposite page 161—Norwegian Case.

wanted the ships for which it contracted and bought assignments for the use of the British Government in the prosecution of the war. Certainly nowhere in the record is the Cunard Line shown to have assigned a single contract nor can the asumption be made that the agent of the British Government was authorized to assign contracts for ships so badly needed in the prosecution of the war. In fact, we have the representation and warranty of the British Controller of Shipping "that each and every of the said contracts, whether placed directly by the Cunard Line with the American shipbuilders, or purchased from the parties who had such contracts with said American shipbuilders was entered into in good faith." [1]

On the other hand, the record discloses interesting material as to the purpose which led the gentlemen on behalf of whom the Norwegian Government presents these claims to purchase the contracts which they assert were requisitioned, and for which they now claim damages.

A/S Manitowoc, on whose behalf claims 1 and 2 are presented, was not organized until September, 1917,[2] and "the board of directors has the right to sell one or both of the contracts and to purchase new tonnage." [3]

The promoters of the A/S Baltimore, on whose behalf claim 3 is presented, "reserve the right to sell the contract if a favorable offer is received." [4]

The promoters of the D/S A/S "Vard II," on whose behalf claim No. 4 is presented, "reserve the right to sell the contract if a favorable offer is received." [5]

A/S Sorlandske Lloyd, on whose behalf claims 5 and 12 are presented, had for its object "to run freight steamers and to buy and sell Ships." [6]

The intention of Jacob Prebensen, Jr., on whose behalf claim No. 7 is presented is somewhat difficult to determine. He states that "my intention was to employ the new vessel in the ordinary carrying trade"; that "it was my intention to form a company to take over the new vessel"; and that it became "impossible however, to form a

[1] Article II, Contract of Jan. 30, 1919—U. S. Counter-case, Appendix, page 92.
[2] Norwegian Case, page 185.
[3] Norwegian Case, Documentary Evidence, page 162.
[4] Norwegian Case, Documentary Evidence, page 179.
[5] Norwegian Case, Documentary Evidence, page 195.
[6] Norwegian Case, page 204.

company, and I therefore had to keep the contract myself and the claim against the American Government for damages."[1]

The intentions of A/S Maritim, A/S Haug and A/S Mercator all managed by Mr. H. Karluf Hansen, on whose behalf claims 9, 10 and 11 are presented, are likewise difficult to determine, but it will be seen from reading the statement of Mr. H. Karluf Hansen as it appears on pages 226 to 229 of the Norwegian Case that he and the gentlemen associated with him had long been in the shipping business and had time and again formed, consolidated and perhaps dissolved shipping companies, and bought and sold ships and ship contracts.

Harry Borthen, on whose behalf claim No. 14 is presented states that "since 1901 I have been working in shipowner and broker business."[2]

N. Chr. Evensen, on whose behalf claim No. 15 is presented apparently acted as broker and not as beneficial owner in the purchase of the contract as is shown by the statement of the attorneys who advanced this claim on May 13, 1919. The statement follows:

> "On September 14, 1917, Christoffer Hannevig Aktieselskabet sold the said contract to the firm of E. & N. Chr. Evensen, as brokers * *".[3]

This seems clearly to demonstrate a real difference between the Cunard Company and the Christiania Group, to wit: a bona fide desire to secure ships for a supremely necessary purpose on the part of the agent of a co-belligerent sovereign on the one hand, and on the other a desire on the part of newly formed concerns to secure perhaps ships, or perhaps grist for the brokerage mill.

(1ae) 32.2% Cunard Keels Laid on August 3, 1917, vs. 13.3% Christiania Group Keels Laid on August 3.

A fifth point of difference is seen by a comparison of the condition of the hulls for the requisition of which the Cunard Company made claim and the hulls of the Christiania Group, notwithstanding the aspersive remark on page 89 of the Norwegian Counter-case that "the statement of the learned agent for the United States that the claims of this group [the Christiania Group] are to be distinguished

[1] Norwegian Case, page 219.
[2] Norwegian Case, page 240.
[3] U. S. Counter-case, Appendix, page 234.

by the condition of their hulls from other claims satisfactorily settled is grotesquely untrue."[1]

On August 3, 1917 keels of 32.2% of the ships of the Cunard Company were on the ways,[2] while, on the other hand, keels of 13.3% of the ships of the Christiania Group were on the ways on August 3, 1917.[3]

The percentage of keels on the ways on August 3rd is compared in this instance only because the United States does not have better figures concerning the Cunard hulls, no Brill reports ever having been made thereon. While a comparison of keel-laying dates subsequent to August 3, 1917 is not indicative of the comparative state of completion on that date, because so uncertain an amount of work may be done on a ship before the keel is laid, nevertheless a comparison of the number of keels laid on August 3rd does have a certain value because there is a minimum of work which must be done before a keel can be laid.

These figures constitute a comparison on a percentage basis of the entire 158 Cunard ships settled for with the entire 15 ships comprised in the Christiania Group in contrast with the specious methods of comparison adopted by the Norwegian Counter-case.

One of these specious methods is to compare the keel-laying dates of all the ships of the Christiania Group building in a given shipyard with the keel-laying dates of all the Cunard ships building in the same shipyard. Three fallacies of this comparison are obvious: (1) It does not take into consideration 77% of the Cunard ships which were building in shipyards not concerned in the Christiania

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[1] Norwegian Counter-case, page 89.

For the sake of keeping the record straight, it is pointed out that the statement in the Case of the United States was:

"This group of claims [i. e., the Christiania Group] is differentiated from the *other Norwegian claims* in which settlement has been made by several circumstances of which perhaps the most important are the history of their ownership and the physical status of the hulls involved." U. S. Case, page 45.

The Norwegian Counter-case twists this statement into the following, viz.:

"* * that the claims of this Group are to be distinguished by the condition of their hulls from *other claims satisfactory settled* * *." Norwegian Counter-case, page 89.

This of course is something quite different from the statement actually made in the Case of the United States. The Cunard claims were "satisfactorily settled" but they were not "Norwegian claims." Having thus with characteristic inaccuracy misstated the contention of the United States the Norwegian Counter-case proceeds to characterize it as "grotesquely untrue."

[2] Progress Reports compiled by the Ship Construction Division of the Emergency Fleet Corporation, accompanying the Counter-case of the United States and mentioned on page 64 thereof.

[3] Column 12, Chart 1, U. S. Case.

Group of claims; (2) it compares, for instance at the yard of the Manitowoc Shipbuilding Company, eight Cunard hulls with two Christiania hulls[1] instead of employing an average percentage basis of comparison, and, (3) it compares keel-laying dates, for the most part subsequent to August 3, 1917, the requisition date, which are unimportant in that they do not bear on the state of completion of the ships compared on the date as of which the liability of the United States is measured, viz. August 3, 1917.

The other specious method adopted by the Norwegian Government is to compare the keel-laying dates of the entire number of ships in one group, already settled, with the keel-laying dates of less than half of the ships of the Christiania Group. Two fallacies of this comparison are obvious: (1) It compares 100% of one group with 40% of the other, and, (2) it compares keel-laying dates, which, as explained above, have no relevancy to any comparison drawn for the purpose of demonstrating the liability of the United States for the requisition which took place on August 3, 1917.

The Norwegian Counter-case on page 79 and on page 84 takes issue with an alleged contention of the United States that the Cunard claims can be distinguished from the Christiania Group claims on the basis of the history of their ownership. The quotation on page 79 of the Norwegian Counter-case, which is taken from page 45 of the Case of the United States, shows the assertion of the United States to be that the Christiania Group claims can be "differentiated from the other *Norwegian claims*" by "the history of their ownership." While the United States, then, has not made the contention that the Cunard claims and the Christiania Group claims can be distinguished by the history of their ownership, it is, nevertheless, interesting to note that the "high premiums above the contract price"[2] reimbursed to the Cunard Company, were paid by the Cunard Company to Norwegian nationals in forty-six out of the fifty-eight cases in which the Cunard Company secured its rights by assignment. The Norwegians were evidently as ready to sell as to buy.[3]

In conclusion, the United States respectfully directs the attention of this honorable Tribunal to five real points of difference between

[1] Norwegian Counter-case, page 85.
[2] Norwegian Case, page 5.
[3] U. S. Counter-case, Appendix, pages 454 and 455.

the Cunard claims and the Christiania Group claims, the first of which, it is believed, is entirely sufficient to distinguish the two in the minds of the members of an international Tribunal.

1. The Cunard claims were advanced by a co-belligerent sovereign, while the Christiania Group claims are advanced by citizens of a friendly neutral.

2. The rights of the British Government were in every case acquired prior to the requisition date, August 3, 1917, while such rights as the Tribunal may adjudge the present claimants to have were in every case acquired subsequent to the requisition date.

3. The British ship construction contracts, acquired by assignment,[1] have an average date, roughly, six months earlier than the ship construction contracts on which the present claimants found their rights.

4. The British government in absolute good faith came to the United States to get ships, while the present claimants and their predecessors in title came to the United States to get perhaps ships and perhaps the necessary wherewithal of a brokerage business.

5. There were on the requisition date, August 3, 1917, 18.9% more of the Cunard keels laid than there were of the Christiania Group keels.[2]

(1b) THE CUNARD ADJUSTMENT WAS NOT MADE UPON THE BASIS OF COMPENSATION FOR CONTRACTS.

(1ba) The Terms of the Formal Adjustment Contracts.

The Norwegian Case endeavors to show that the Cunard adjustment was made upon the basis of compensation for requisitioned contracts,[3] but it plainly appears on the face of the record that there was involved no admission by the United States Shipping Board or the United States Government that contracts were requisitioned.

By the third paragraph of the Agreement of January 30, 1918, the requisition order of August 3, 1917 is described as "requisitioning all of the ships over 2500 tons d. w. capacity under construction in American shipyards, and the materials for said ships[4]." Here is no mention of the requisition of contracts.

[1] The record does not disclose the dates of the contracts directly between the Cunard Company and the shipbuilders.

[2] See supra p. 62.

[3] Norwegian Case, pages 70, 112, etc.

[4] U. S. Counter-case, Appendix, page 91.

In the mutual release agreement between the Cunard Company, the Union Iron Works and the Fleet Corporation, which is typical of the mutual release agreements entered into in cases where the Cunard Company had made its contracts directly with the shipbuilder, it is stated in paragraph three

"On August 3, 1917, the Fleet Corporation * * * duly requisitioned the said ships and the materials therefor, and ordered the shipbuilding company to complete the same on behalf of the United States."[1]

In clause II of the same contract "the Cunard Line hereby makes claim * * * for compensation for all damages arising out of the said requisition order in so far as it *affects* the said ships, the materials therefor, and the said contracts."[2]

These excerpts seem to show beyond any peradventure of a doubt that the requisition order of August 3, 1917, requisitioned ships and the materials therefor and merely *affected* contracts.

That the $80,794,041.65 paid to the Cunard Company under the terms of the contract of January 30, 1918, was paid not for contracts alleged to have been requisitioned, but for ships and materials requisitioned, is shown by Clause IV of this contract which states in part:

"The Shipping Controller and the Cunard Line hereby severally acknowledge that the payment hereinabove in Clause I provided for, is payment in full for all claims arising out of the Requisition Order of August 3, 1917,"[3]

with certain exceptions which do not include the alleged requisition of contracts. It will be remembered that by previous terms in paragraph three of this same contract the requisition order was described as requisitioning ships and materials.

Paragraph numbered 3 of the Supplementary Agreement of June 20, 1918 states:

"The Cunard Line, as the Agent of the British Controller of Shipping was, by virtue of payments made to the builders under the contracts, on August 3, 1917 (date of the requisition order) the sole owner of said ships and material therefor (except such interest as the respective shipbuilders had at that time under the contracts therefor) and *was on January 30, 1918* (date of the original contract) *the sole owner of said contracts*, * * and agree to indemnify the United States * * * against loss on account of

[1] U. S. Counter-case, Appendix, page 99.
[2] U. S. Counter-case, Appendix, page 100. Italics Ours.
[3] U. S. Counter-case, Appendix, page 93.

claims, liens or incumbrances on said ships or material therefor accrued as of or prior to August 3, 1917, the date of requisition and/or said contracts accrued as of or prior to January 30, 1918 ".[1]

This is clearly an admission by the Cunard Line and the British government that the contracts were not requisitioned on August 3, 1917 because it is stated that the Cunard Line " was on January 30, 1918 * * * the sole owner of said contracts ".[2]

It is obvious that had the contracts been requisitioned on August 3, 1917 the Cunard Line could not have been their owner on January 30, 1918.

The mutual releases contained in the contract of January 28, 1918 between the Fleet Corporation, the Cunard Company and the Union Iron Works, further clearly show that the Cunard contracts were not requisitioned on August 3, 1917. By Clauses V and VI of this contract,[3] which are substantially the same as Clauses V and VI of the mutual release agreement of January 28, 1918 between the Fleet Corporation, the Cunard Company and the Manitowoc Shipbuilding Company, which is typical of the mutual releases entered into in cases where the Cunard Company acquired its contract rights by assignment, the Cunard Company releases the shipbuilder and the shipbuilder releases the Cunard Company from the ship construction contracts. Clearly, this would not have been necessary had the United States been regarded by the parties as having stepped into the shoes of the Cunard Company by the alleged requisitioning of its contracts on August 3, 1917. Had that been the case there would have been no mutual obligations between the Cunard Company and the shipbuilder to release on the date of this mutual release agreement.

By Clause VI the Cunard Line releases the United States " from all liability with respect to said ships, materials and contracts, arising out of the said requisition order of August 3, 1917."[4]

The intent of the parties is very carefully couched in language which refrains from even intimating that contracts were requisitioned.

By Clause V the shipbuilder releases the United States " from any and all claims arising out of the contracts."[5] This Clause further

[1] U. S. Counter-case, Appendix, pages 96 & 97. Italics ours.
[2] U. S. Counter-case, Appendix, page 97.
[3] U. S. Counter-case, Appendix, pages 100 and 101.
[4] U. S. Counter-case, Appendix, page 101.
[5] U. S. Counter-case, Appendix, page 100.

goes on to state that "nothing herein contained shall relieve the shipbuilding company from its obligation to deliver the said ships to the United States or the Fleet Corporation from its obligation to pay the shipbuilding company the compensation heretofore agreed to be paid by the Fleet Corporation,"[1] viz "amounts *equal to* the unpaid balances of the contract price between the shipbuilding company and the Cunard Line."[2]

(1bb) The Dealings Subsequent to August 3d.

Subsequent to August 3 the Cunard Line tendered progress payments to the builders as they became due "to safeguard their position vis a vis the builders." According to the head of the British War Mission, it was necessary "in the opinion of their legal advisers to make these tenders in order to provide against the possibility of awkward question being brought up hereafter."[3]

Mr. Chester W. Cuthell, then Chief Counsel of the Fleet Corporation, was of the opinion that this "shows very clearly that the Cunard lawyers have advised that the contracts under which so many ships were being constructed in our yards have not been broken by reason of the requisition order of August 3, 1917; that in requisitioning the mass of material which would become a ship if completed we did not relieve the shipbuilder from his contract obligations to deliver a ship of contract specifications to the Cunard Line after the delay due to the requisitioning order had ended. Similar action has been taken by Luckenbach under his contracts with the Fore River Shipbuilding Corporation."[4]

On the same date Admiral Capps directed the Cunard Company "not to make any further payments or tenders" of progress payments made "supposedly with the idea of complying strictly with the provisions of your contracts with the shipbuilders."[5]

Subsequently, Mr. Cuthell, in a memorandum for Admiral Capps, recommended that mutual releases between the shipbuilders and the Cunard Company be secured for the protection of both, saying—

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[1] U. S. Counter-case, Appendix, page 101.

[2] U. S. Counter-case, Appendix, page 99. Italics ours.

[3] T. Royden to W. L. Capps, September 10, 1917. U. S. Counter-case, Appendix, page 87.

[4] Memorandum for W. L. Capps, by Chester W. Cuthell, September 12, 1917, U. S. Counter-case, Appendix, page 87.

[5] W. L. Capps to the Cunard Company, September 12, 1917, U. S. Counter-case, Appendix, page 88.

"Such releases will make unnecessary the making of tenders of payment by the Cunard Line which are creating such uneasiness on the part of our shipbuilders. With these releases it will be unnecessary to requisition the *contracts*, because the substantial points will have been covered."[1]

If the words of the formal agreements do not suffice, here is a practical demonstration that the Cunard Line, on advice of counsel, made tenders of progress payments to the shipbuilders after August 3, 1917, the requisition date, for the purpose of fulfilling their contract obligations, so that, should the breach of these contracts ever become a matter for litigation, the Cunard Line would be able to establish a breach by the builders in not building the ships for the Cunard Line, and full compliance with the requirements of the contracts by the Cunard Line, by the tendering of payments as due. The only theory of law on which this course of action could have been founded is that the contracts between the Cunard company and the shipbuilders were not requisitioned by the order of August 3, 1917, but remained in full force and effect.

(1bc) Results Sought.

In making the Cunard adjustment the United States had two definite aims which were entirely separate and distinct. These aims were:

(a) To pay just compensation for the ships and materials requisitioned on August 3, 1917.

(b) To extinguish all rights and obligations existing between the Cunard Company and the shipbuilders under the contracts in force on August 3, 1917.

The immediate importance of the contracts lay in the possibility that they might lead to costly and troublesome litigation between American shipbuilders and the British government with which the United States was closely associated in the prosecution of war against a common enemy.

To destroy the possibilities of litigation between its own citizens and an associated government, the United States, in making settlement for the requisitioning of August 3, 1917, sought at the same time to extinguish the rights and obligations between the Cunard Company and the shipbuilders existing under the contracts.

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[1] Memorandum for W. L. Capps, by Chester W. Cuthell, October 25, 1917, U. S. Counter-case, Appendix, pages 89 at 90.

The purposes which the United States had in seeking the extinguishment of contract rights and obligations between the Cunard Company and the shipbuilders were as follows:

(a) To relieve American shipbuilders from the danger of litigation and from any possible claim that they were liable to deliver *other ships* after the conclusion of the war.

(b) To relieve the Cunard Company, as agent of an associated government, from any danger of liability for breach of contracts with the shipbuilders.

These two purposes are stated definitely in the memorandum of October 25, 1917, from Chester W. Cuthell to Admiral Capps. This memorandum says:

"(1) We should obtain from the Cunard Line proper releases of all our shipbuilders from all of their contracts with the Cunard Line or with parties who assigned their contracts to the Cunard line, *so that the shipbuilders will be relieved from the danger of litigation and from any possible claim that they are liable to deliver other ships after the emergency has passed.*

"(2) We should obtain similar releases from our shipbuilders for the Cunard Line, *so that the Cunard Line may not be in any danger of liability for breach of their contracts with the shipbuilders.*"[1]

It is quite clear from the contract and from the negotiations leading to the adjustment that the value of the contracts was never a consideration. Mr. Cuthell, in the memorandum referred to above, excluded such irrelevant considerations. His memorandum said:

"(4) The compensation to be paid the Cunard Line should be on the basis of mere reimbursement for their actual outlay."[2]

The United States is unable to see that the requisitioning of ships and materials on August 3, 1917, and the extinguishment of contract rights on January 30, 1918, are only "different expressions of the same act." The purposes and the results of these two acts were entirely distinct.

The conclusion is, we think, inevitable that the adjustment with the Cunard Company, as representing the British Government, amounted to:

(a) The payment of statutory compensation for the physical property requisitioned by the order of August 3, 1917, without regard to

[1] U. S. Counter-case, Appendix, pages 89–90.
[2] U. S. Counter-case, Appendix, page 90.

the contracts between the Cunard Company and the shipbuilders, or to the value of such contracts;

(b) The extinguishment of all the rights and obligations existing as between the Cunard Company and the shipbuilders, the purpose being to relieve the Cunard Company and the shipbuilders from liability *inter se*[1] under their contracts.

2. The Stray Settlement.

(2a) SIX POINTS OF DIFFERENCE BETWEEN THE STRAY GROUP SETTLEMENT AND THE CHRISTIANIA GROUP CLAIMS.

The Norwegian Counter-case concludes that "There is no difference between the claims of the Christiania Group and those * * * of the Stray Group".[2] The United States respectfully calls the attention of the Tribunal to six real differences between the two groups.

The United States on page 45 of its Case asserts that the Christiania Group of claims "is differentiated from the other Norwegian claims in which settlement has been made by several circumstances of which perhaps the most important are the history of their ownership and the physical status of the hulls involved."[3]

By an entirely misleading course of discussion the Norwegian Counter-case attempts to make the distinction pointed out by the United States apply not to the "other Norwegian claims," the Stray Group, but the Cunard claims.[4] The United States has not sought to differentiate the Christiania and the Cunard claims by the history of their ownership, but by several real distinctions which have already been set down.[5]

Since this point has been raised, however, it is thought proper to say that while the various owners of the Christiania Group claims have many times assigned their holdings, the history of the Cunard claims is exactly the reverse, the Cunard Company never assigning a single contract. There is, too, a great difference in the character of the parties holding the two groups of claims during their history,

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[1] It is not necessary in this case to pass upon the question as to what rights the United States acquired in the contracts themselves by this adjustment.

[2] Norwegian Counter-case, page 91.

[3] U. S. Case, page 45.

[4] Norwegian Counter-case, pages 79–84.

[5] Ante pages 59 et seq.

on the one hand citizens of a friendly neutral, and on the other the representative of a sovereign government.[1]

(2aa) The Interest of Christoffer Hannevig.

As distinguishing the history of the ownership of the Christiania and the Stray groups the United States points to columns 26 of Chart One accompanying the Case of the United States and the Stray Chart accompanying the Counter-case of the United States.

A comparison of these two columns will show that Christoffer Hannevig, whose name the Christiania Group once bore, had an active interest at one time or another in every hull in the Christiania Group, but that he was never interested in more than four of the 27 Stray Group hulls.

(2ab) 29.6% Stray Group Claims Assigned After August 3d vs. 100% Christiania Group Claims Similarly Assigned.

A second point of difference, which bears on the history of the ownership of the two Groups, is that 100% of the Christiania Group claims were assigned after August 3, 1917, the requisition date.

On the other hand only 29.6% of the Stray Group hulls were assigned after their requisition by the United States and as will be subsequently demonstrated[2] the claimants who claimed by assignment subsequent to August 3, 1917, did not get a share of the $34,500,000. proportionately equal to the sums paid to the others. In fact, in the Stray Group "eight contracts have not changed hands but were owned by the original contractor,"[3] while in the Christiania Group no claim is presented by the original owner.

(2ac) Good Faith vs. Watchful Waiting.

A third point of difference is shown by the comparison between the general good faith of the Stray Group and the tactics of the Christiania Group.

First to be considered is the fact that Mr. Stray's statement[3] that the claims of the Stray Group "belong to well-known Norwegian owners who would have bought them in order to use them in their own trade, and to replace vessels lost during the war"[3]

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[1] See supra, page 59.

[2] Post page 89.

[3] Emil Stray to the Attorney General, December 16, 1918. U. S. Counter-case, Appendix, page 107 at 108.

is supported by the fact that 29.6% of these hulls were never assigned but were kept by their original owners. This indicates a desire to secure ships and not contracts to buy and sell. But the statement on page one of the Norwegian Case that the present claimants "bought their contracts in 1917 in good faith for the purpose of replacing ships which the submarines had sunk"[1] does not deserve equal credence when it is remembered that the companies presenting the first four claims were not formed until September, 1917, that every claimant bases his rights on an assignment of some one else's contract, and that the hint of the brokerage business pervades the whole record of the claimants.

Again, the Stray Group "had been actively carrying on negotiations for a settlement practically ever since the requisition."[2] While the Christiania Group claims were not presented until "In June, 1919, J. Harry Covington, counsel for the Christiania Group, formally set forth the claims in a letter to Chairman Hurley."[2] If it were "the expectation and understanding that whatever principles were arrived at for settling with that [Stray] Group would be applied to the Christiania Group" and if the Christiania Group were merely "not formally included" in the Stray Group, why should the Christiania Group claims not have been formally presented long before the Stray settlement instead of "waiting to find out on what figure, or on what basis the board was going to settle these [Stray] cases before submitting the claims he [Christoffer Hannevig, Sr.] represents"?[3]

It is of course true that Christoffer Hannevig on several occasions made representations to the Shipping Board concerning settlement with Norwegian former owners, but when asked directly what claims he represented,[4] he replied that he did not write "as representing any Norwegian claims."[5]

This record seems strongly to suggest that the differences between the Stray and the Christiania Groups were appreciated by the Norwegians whose hulls had been taken by the requisition of August 3,

[1] Norwegian Case, page 1.
[2] Norwegian Counter-case, page 27.
[3] U. S. Counter-case, Appendix, page 17.
[4] Mr. Cuthell to Mr. Hannevig, September 9, 1918, U. S. Case, Appendix, page 330.
[5] Christoffer Hannevig to Chester W. Cuthell, September 11, 1918, U. S. Case, Appendix, page 331.

1917, and that the most deserving claims were first put forward for the purpose of setting up a high standard of values, which could be pointed to with insistence by the second group as a criterion for the settlement of their inferior claims.[1]

(2ad) Early Contracts vs. Late Contracts.

A fourth point of difference between the Stray and the Christiania Groups is that the Stray Group contracts, for the hulls which were requisitioned, were entered into on an average six months before the ship-construction contracts of the Christiania Group. The average contract date of the Stray Group contracts is August 9, 1916, and the Christiania Group average is February 7, 1917.

(2ae) 47.5% Completion vs. 15.24% Completion.

A fifth point of difference is found in the average state of completion of the hulls of the two groups on August 3, 1917.

The United States has not sought to compare the hulls of the Christiania Group which happen to be built at one shipyard, with the Cunard or Stray hulls building at the same shipyard. The Norwegian Counter-case, however, proceeds to do just this.[2]

Hulls 87 and 88 (claims 1 and 2) building at the Manitowoc Shipbuilding Company, are compared with eight Cunard and one Stray hulls. Hull No. 80, which was one of the hulls included in the Stray Group and which was built at this shipyard, is for some reason omitted from the tabulation although its existence was known to the gentlemen who wrote the Norwegian Counter-case because mention of it is made on page 88 of their Counter-case.

Hull No. 81, which heads the list, is not credited with being a Stray Group hull although it was, and appears as such in the tabulation on page 88 of the Norwegian Counter-case.

Hulls 95 and 92 (claims 3 and 4) building at the Seattle Construction and Dry Dock Company are compared with one Stray hull, six Cunard hulls, one American hull, and two "about which we have no information."[3]

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[1] See, in this connection, Mr. Stray to Mr. Cuthell, May 4, 1918, in which he explains that Pusey & Jones hull No. 12, 4500 d. w., (Claim No. 9 of the Christiania Group) which had theretofore constituted one of the ships of the Stray Group, was "now deducted * * * as belonging to an American Company on the 3rd. of August 1917," and "instead of the Pusey Jones contract with very late delivery" certain "valuable contracts for tankers" are being included. U. S. Counter-case, Appendix, page 106.

[2] Norwegian Counter-case, pages 85–90.

[3] Norwegian Counter-case, pages 86–87.

Hull 17 (claim 5) is compared, not in tabular form with the other hulls building at the same shipyard, but in glittering generalities with all the Stray and all the Cunard hulls. Presumably the comparison adopted by the Norwegian Counter-case has been varied from due to the fact that this hull "was the last of the keels of requisitioned vessels laid by this yard."[1]

Hull No. 2 (claim 6) is compared with seven Cunard hulls, the keel laying dates of three of which are not given, and two French hulls, the keel laying date of only one of which is given. The original form of comparison is resumed presumably because this hull stands well up in the list.

Then the hulls on account of which claims 1 to 6 inclusive are made are said to be tested "by the comparative state of completion"[2] of the Stray Group. As of what date this "state of completion" is figured is not declared but by close inspection it may be observed that a comparison of the actual delivery dates is intended, although one Christiania Group hull, No. 17, is put too high in the list according to the figures printed in the Norwegian tabulation.

Thereupon the Norwegian Counter-case comes to the conclusion that the distinction suggested by the United States in the difference between the states of completion of the two groups is "grotesquely untrue". Before arriving at this conclusion no consideration is given to nine of the Christiania Group of hulls.[3]

Following this conclusion is a statement that "in regard to claims Nos. 12, 13, 14 and 15, the test of the state of completion of the hulls is not of any significance."[3] No intelligible reason is given to substantiate this statement.[4] And finally, hulls 1010–1014, inclusive, on account of which claims 7 to 11, inclusive, are made are dismissed with the innocuous statement that "The hulls of the five Pusey & Jones, Wilmington, vessels were not less advanced than a number of Cunard hulls."[5]

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[1] Norwegian Counter-case, page 87.

[2] Norwegian Counter-case, page 88.

[3] Norwegian Counter-case, page 89.

[4] The reason which the Norwegian Counter-case apparently intends to give is that "the contracts which the United States had requisitioned were cancelled by the Fleet Corporation. It is therefore impossible to tell when the keels would have been laid and unprofitable to speculate upon it," Norwegian Counter-case, page 89. It is difficult to see how the fact that these hulls were so little advanced that it was not thought worth while to complete them divests the "state of their completion" at the time of their requisition of "any significance." As has been repeatedly pointed out by the United States, it is "unprofitable" to consider the keel laying dates, even if ascertainable, when better methods of measuring the state of completion are available.

[5] Norwegian Counter-case, pages 89–90.

The superficiality and inadequacy of this comparison is patent. No adequate consideration is given to claims 7 to 15 inclusive or to the Cunard or Stray hulls building at yards other than those concerned in the Christiania Group. These six Christiania hulls are compared with only 11% of the Stray hulls and with only 13% of the Cunard hulls.

While the United States does not concede that the comparative delivery dates of the hulls comprised in the Christiania and Stray Groups has any serious bearing on their respective states of completion on Aug. 3rd, 1917, nevertheless, for the information of the Tribunal and for the refutation of the unsound comparison made in the Norwegian Counter-case, the United States draws attention to the fact that the average actual delivery date of the Stray hulls was about April 6, 1918, and the average actual delivery date of the Christiania hulls was about April 18, 1919, more than a year later.

While the United States does not for a moment admit that the comparative keel laying dates have any relevancy to the questions to be decided by this Tribunal, nevertheless, for the information of the Tribunal and for the refutation of the unsound comparison made in the Norwegian Counter-case, the United States draws attention to the fact that the average keel laying date of the twenty-seven Stray hulls was May 4, 1917, and the average keel laying date for the Christiania Group hulls, exclusive of the three that were never laid, was May 9, 1918, more than a year later.

In fact the insufficiency of a comparison of keel laying dates may be clearly seen by a quotation from the statement of Mr. Vilhelm Reimann, whose testimony is advanced presumably as that of an expert witness in the Norwegian Counter-case. Mr. Reiman says:

> "I understand that the keel had not been laid by August 1, 1917, but consider this fact of little importance, as a ship may be far advanced and considerable work and capital placed in her before the keel is actually laid."[1]

Again, merely for the purpose of argument and because the Norwegian Counter-case has seen fit to do so, the United States compares the average keel-laying dates of the first six Christiania hulls with the entire twenty-seven Stray hulls. The average keel laying date

[1] Norwegian Counter-case, Appendix, page 144.

for the entire twenty-seven Stray hulls was May 4, 1917, and for the first six Christiania hulls was September 1, 1917, substantially four months later.

Notwithstanding the specious comparisons attempted to be made by the Norwegian Counter-case the United States submits that the true test of similarity or difference is the comparative state of completion of the two Groups of hulls on August 3, 1917, the requisition date. This becomes clear when it is realized that the state of completion of a particular hull or group of hulls is figured for the purpose of basing thereon the liability of the United States for the requisition. The liability of the United States for the requisition arose on August 3, 1917. Therefore, the pertinent date as of which the state of completion is to be figured is August 3, 1917. Therefore, for the purpose of comparing the two groups of hulls to show the similar or dissimilar liability of the United States for their requisition, the date of the requisition, August 3, 1917, must be taken.

Based on the figures of George M. Brill, consulting engineer of the Fleet Corporation, the average percent complete of the twenty-seven ships of the Stray Group was 47.5% on August 3, 1917. Based on the same figures, the average per cent complete of the fifteen ships of the Christiania Group was 15.24%.

Attention may well be called here to the method employed by Mr. Brill [1] in figuring the percent complete on August 3, 1917. He has taken a finished vessel as 100% complete, and allocated to the various processes of construction the following weight percent.

Hull		
Plans, mold-loft work or patterns, material ordered, etc	8.1	
Steel for hull, unfinished castings and other material received	21.2	
Materials worked	9.3	
Materials erected in hull	11.4	
		50.0
Carpenter and Joiner Work		
Materials worked	3.7	
Materials erected in hull	1.3	
		5.0

[1] As pointed out in the Case of the United States, page 48, the Brill reports were made with great care for the purpose of showing the exact physical condition of the hulls on August 3d, and thus enabling the United States to make just compensation for the property taken. Not the slightest attempt has been made in the Norwegian Case or Counter-case to impeach Mr. Brill's methods or results. It may therefore be assumed that his figures are not questioned by Norway.

Machinery Outfit		
Plans, mold-loft work or patterns, material ordered, etc	3.2	
Steel for hull, unfinished castings and other material received	7.2	
Materials worked	5.6	
Erected in shipbuilders shop or received at shipyard	7.0	
Installed in ship	5.6	
Dock trial, tools and outfit, miscellaneous	1.4	
		30.0
Equipment outfit		
Plans, mold-loft work or patterns, material ordered, etc	1.5	
Erected in shipbuilders ship or received at shipyard	8.5	
Installed in ship	5.0	
		15.0

Thus it is seen that, irrespective of the laying of the keel, Mr. Brill has pictured the true per cent complete of a ship on August third, giving due consideration and weight to every phase of the work of building a ship. The comparative average figures of 47.5% for the Stray hulls and 15.24% for the Christiania hulls are taken from figures prepared by Mr. Brill in the manner above described for each individual hull in each of the two groups.

It is submitted that the figures afford a truly fair comparison of the average state of completion of the ships of the two groups on August 3, 1917, the date on which the liability of the United States with respect thereto arose, and the only pertinent date for the making of any such comparison.

Again, merely for the purpose of argument, and because the Norwegian Counter-case has seen fit to do so, a comparison is drawn between the twenty-seven Stray hulls and the first six Christiania hulls, as of August 3, 1917. On that date, based on Mr. Brill's figures, the twenty-seven Stray hulls averaged 47.5% complete, while the first six Christiania Group hulls averaged 36.95% complete.

These comparisons between the Cunard and Stray claims and the Christiania Group claims are advanced by the United States as entirely sufficient rebuttal of the Norwegian allegation that "these Christiania Group hulls will stand favorable comparison with the average of any group for which settlement has been made by the United States."[1]

[1] Norwegian Counter-case, page 89.

(2af) A Lump-Sum Compromise Agreement vs. Individual Claims to Be Judicially Determined.

Finally, as a sixth point of difference, it must be remembered that the Stray settlement was a "lump sum agreement,"[1] "a compromise settlement * * without any especially defined basis,"[2], or in the classic language of Mr. Gillen as quoted in the Norwegian case, arrived at by "horse trading without seeing the other fellow's horse,"[3] while the decision of the present claims will not be a settlement but a judgment of a court, and will not be as a lump sum for a group of claims, but will be a series of fifteen individual judgments.[4]

The United States contends that these comparisons destroy any fancied foundation for the statement that "there is no difference between the claims of the Christiania Group and those of the Cunard Company or of the Stray Group."[5]

It is further urged by the United States that there is no substantiation in the record for the Norwegian argument that the "treatment of Christiania Group due to difference in Shipping Board policy and not to difference in claims."[6] The United States cheerfully concedes that the Christiania Group claims were adjudicated on the part of the Shipping Board by the so-called Payne Administration, inasmuch as Mr. Payne was chairman of the Shipping Board at the time these claims came before the Board. The United States further "admits" that "he [Mr. Gillen] said that they[7] were founded upon the assumption that the order of August 3 had requisitioned the contracts to build these hulls,"[6] but the United States denies the accuracy of Mr. Gillen's statement and maintains that the Cunard, Stray, Mitsui and John M. Connelly settlements, mentioned in the Norwegian Case and Counter-case, and certain typical settlements with American former owners, all of which are analysed in this Argument, were not made on the basis of payment for contracts, and

[1] Mr. Bryn to the Shipping Board, August 18, 1919, U. S. Counter-case, Appendix, page 126.

[2] Mr. Bryn to Mr. Merle Smith, January 16, 1920, U. S. Counter-case, Appendix, page 128 at 129.

[3] Mr. Gillen's statement before the Select Committee on U. S. Shipping Board Operations. See Norwegian Counter-case, page 90.

[4] "The Tribunal shall * * determine what sum if any shall be paid in settlement of *each* claim." Special Agreement of June 30, 1921, Article I, paragraph three, U. S. Case, Appendix, page 3 at 4.

[5] Norwegian Counter-case, page 91.

[6] Norwegian Counter-case, page 90.

[7] That is, the earlier settlements.

takes issue with the Norwegian contention that the so-called Payne Administration proposed to settle with the Christiania Group on a basis theretofore unknown.

(2b) THE REQUISITIONING OF CONTRACTS SPECIFICALLY PRECLUDED—THE FORMAL CONTRACT OF SETTLEMENT.

The language of the Stray Settlement in terms specifically precludes the idea of the requisition of contracts.

The Norwegian Counter-case states that

"Both the Department of Justice of the United States and the Shipping Board have by express admission and by settlements which they have made, conceded that this [the requisition of contracts] was the legal effect of the requisition."[1]

This is understood by the United States to mean that the "express admission" has been made by the Department of Justice, and that the settlements containing the admissions have been made by the Shipping Board. The "express admission" and the subsequently mentioned "another instance" will be later dealt with.[2]

In the immediately preceding pages it has been demonstrated that by the Cunard Adjustment the United States in no way admitted the requisition of the Cunard contracts, but on the contrary, it was proved by quotations from the formal agreements themselves that the Cunard Company on January 30, 1918 was the owner of the contracts alleged to have been requisitioned on August 3rd, which precludes their alleged requisition on August 3, 1917.

Of the two settlements relied on by the Norwegian government, therefore, there remains only the Stray Settlement to substantiate the statement of fact previously quoted from page 77 of the Norwegian Counter-case. It is a simiple matter of demonstrating again by quotations from the formal contract, that the Stray Settlement is by no means an admission by the United States that contracts were requisitioned.

Paragraph numbered 3 of the Stray Settlement contract, dated June 3, 1919, reads as follows:

"Whereas the Fleet Corporation, representing the United States, on or about August 3, 1917, requisitioned the said unfinished vessels and/or materials, machinery, equipment and outfit thereto pertain-

[1] Norwegian Counter-case, page 77.
[2] Norwegian Counter-case, page 77. See infra page 109.

ing, and is *alleged* to have requisitioned the contracts to build said vessels" [1]

Paragraph numbered 5 speaks of "Property requisitioned or alleged to have been requisitioned as aforesaid." [2]

Paragraph numbered 6 speaks of "Said requisition and alleged requisition." [2]

Article A speaks of "property requisitioned or alleged to have been requisitioned as aforesaid." [3]

Article B speaks of "said requisition of the said unfinished vessels listed in 'Schedule A' and/or materials, machinery, equipment and outfit thereto pertaining, and said alleged requisition of the contracts to build said vessels." [4]

It is seen that the parties to the Stray Settlement were meticulously careful to describe the requisition of ships, materials and commitments for materials as "said requisition" or "property requisitioned" and were equally careful to say that the order of August 3, 1917 "is alleged to have requisitioned the contracts" and to speak of the alleged requisition of contracts by such phrases as "property * * * alleged to have been requisitioned as aforesaid," and "said alleged requisition of the contracts."

It is submitted that nowhere in the formal contract of settlement is there the slightest concession on the part of the United States that contracts were requisitioned.

Article C "releases each and every builder * * * from all claims and demands of every sort and nature whatsoever arising from or having relation to the contract of said builder to build and deliver said vessel." [4]

This release of the shipbuilders from the obligations of the ship-construction contracts was thought necessary for the same reason as in the case of the Cunard contracts, because of the fact that the

[1] U. S. Counter-case, Appendix, page 117. Norwegian Case, Documentary Evidence, page 135. Italics ours.

[2] U. S. Counter-case, Appendix, page 117. Norwegian Case, Documentary Evidence, page 136.

[3] U. S. Counter-case, Appendix, page 118. Norwegian Case, Documentary Evidence, page 136.

[4] U. S. Counter-case, Appendix, page 118. Norwegian Case, Documentary Evidence, page 137.

ship-construction contracts had not been requisitioned by the Fleet Corporation on August 3, 1917, the date of the requisition order.

It is submitted, therefore, that the statement previously quoted from page 77 of the Norwegian Counter-case, asserting that the Shipping Board has admitted by settlements made with other former owners of ships and materials requisitioned by the order of August 3, 1917 that contracts were requisitioned, is entirely without foundation in fact in either of the two settlements so largely relied upon by the Kingdom of Norway.

(2c) THE REQUISITIONING OF CONTRACTS SPECIFICALLY PRECLUDED—SUBSEQUENT CORRESPONDENCE.

But the formal contract of settlement is not the sole source of evidence to disprove the erroneous statement of fact [1] that the Shipping Board has admitted by settlements that contracts were requisitioned.

On August 4, 1919, Secretary of State Lansing, in a letter to Minister Bryn speaks of the "$34,500,000 as compensation for twenty-seven vessels requisitioned." Further on in this letter he speaks of "alleged requisitions." [2] In the opinion of the Secretary of State, then, the $34,500,000 was paid "as compensation for twenty-seven vessels requisitioned," but there were in addition to these certain "alleged requisitions," which refers to the Norwegian contention that contracts were requisitioned.

In a memorandum of the conversation had with the Norwegian Minister on August 9, 1919, Mr. Breckenridge Long speaks of "thirty four and a half million dollars for the Norwegian appropriated *tonnage*." [3]

In a letter to Vice-President Ackerson of the Emergency Fleet Corporation the Norwegian Minister on August 15, 1919 speaks of "27 *hulls* embraced by the agreement of June 3, 1919" and "*ships* requisitioned from them." [4]

But aside from these incidental references to the true effect of the requisition order and the true interpretation of the Stray settlement, the attention of the Tribunal is respectfully directed to a

[1] Norwegian Counter-case, page 77.
[2] Mr. Lansing to Mr. Bryn, U. S. Counter-case, Appendix, page 124.
[3] U. S. Counter-case, Appendix, page 125. Italics ours.
[4] Mr. Bryn to Mr. Ackerson, August 19, 1919. U. S. Counter-case, Appendix, pages 126 to 128. Italics ours.

communication from the Norwegian Minister to Mr. Merle Smith, in which the Norwegian Minister says

"As I mentioned to you, the question of whether the contracts were requisitioned or not, was not taken up for decision or decided upon by the agreement concluded on June 3rd, 1919, which states that the compensation agreed upon was for requisition of unfinished vessels and/or materials, machinery, equipment and outfit thereto pertaining and "alleged" requisition of the contracts to build said vessels. For your convenience I enclose a copy of said agreement (except the schedules therein mentioned). By this agreement a compromise settlement was reached without any especially defined basis."[1]

Clearly then the Cunard and Stray settlements demonstrate as an assertion entirely unsupported in fact the Norwegian statement[2] that the Shipping Board has admitted by settlements that it requisitioned contracts.

(2d) MR. STEVENS' ALLEGED PROMISE.

As a part of its contention that the Stray Group should be used as a criterion in the award to be rendered the Christiania Group, the Norwegian Government, by a series of inferences, asks this honorable Tribunal to believe that Commissioner Stevens, for the Shipping Board, promised the Christiania Group that it would receive the same treatment as the Stray Group in the settlement of its claims. On page 6 of the Norwegian Case, it is said

"Furthermore, it appears that the Hurley Administration intended to settle the claims now before this Tribunal on the basis of the settlement with the Stray Group. Commissioner Stevens of the Shipping Board, who had charge of the Stray Settlement, so stated in a letter written after the conclusion of that settlement."

Page 81 of the Norwegian Case contains this heading

"(5) Commissioner Stevens Promises Settlement of Christiania Group Claims on Same Basis as Stray Group."

Under this heading the Norwegian narrative goes on to say that

"At the time the Stray Settlement was put through in June, 1919, Commissioner Stevens, who had the matter in charge, wrote a letter in which he stated that it was the intention of the Board to settle the fifteen remaining Norwegian contracts (the Christiania Group) on the same basis as the Stray Group."[3]

The Norwegian government is very careful to refrain from saying that Commissioner Stevens directed his alleged letter to the Chris-

[1] Mr. Bryn to Mr. Merle Smith, January 16, 1920. Counter-case, Appendix, page 129.
[2] Norwegian Counter-case, page 77.
[3] Norwegian Case, page 81.

tiania Group or to anyone acting in its behalf. However, to prove its statement that such a letter was written by Commissioner Stevens the Norwegian Case quotes Mr. Gillen as saying—

"There is a letter which I have seen in the files, by Commissioner Stevens in which he *notifies the Norwegians of the second group*, which I will come to later and which was settled under Judge Payne's administration, that the Norwegians would be given the same consideration in the second settlement. However, that did not occur."[1]

Again on page 111 of the Norwegian Case Mr. Gillen is quoted as saying

"Now, as to the second set of Norwegian claims, known as the Christiania Group * * * That was the claim with reference to which Commissioner Stevens *wrote them* that they would receive the same consideration in connection with this claim as in connection with the other."[2]

The evidence advanced by the Norwegian government to prove to this honorable Tribunal that a promise was made to them by Commissioner Stevens of the Shipping Board that the Christiania Group would be settled with on the same basis as the Stray Group is not the best evidence, i. e. the letter itself, but a statement by Mr. Gillen before a Congressional committee. Further on in this testimony Mr. Gillen states that he assumed his duties on October 1, 1919,[3] four months after the Stray Settlement, and when asked concerning the atmosphere in which the Stray Group claim was settled he states "I was not there and my testimony is hearsay."[4]

In its Counter-case the Norwegian government twice brings to the Tribunal's attention the inference that it holds the promise of Commissioner Stevens on behalf of the Shipping Board to settle with the Christiania Group on the same basis as the Stray Group, each time referring to the statement above quoted from page 81 of the Norwegian Case as substantiating this assertion.[5]

If the Norwegian Government or the claimants have in their possession a letter written by Commissioner Stevens promising that the Stray Group settlement will be used as a basis for the settlement of

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[1] Norwegian Case, page 81. Italics ours.
[2] Norwegian Case, page 111. Italics ours.
[3] Norwegian Case, page 94.
[4] Norwegian Case, page 108.
[5] "Commissioner Stevens, it will be recalled, promised that the Christiania Group should receive the same treatment as the Stray Group." Norwegian Counter-case, page 27. "* * * Mr. Steven's letter promising to the Christiania Group the same treatment which the Stray Group received." Norwegian Counter-case, page 30.

the claims of the Christiania Group, they should have produced it. They have not done so. If there is nothing to prove the existence of such a letter but the unsubstantiated statement of Mr. Gillen, whose statements in another connection the Norwegian Counter-case has characterized as "careless and inaccurate,"[1] this should be frankly admitted. It is respectfully suggested that this Tribunal might well ask an "explanation" on this point from the Norwegian Agent, in accordance with the third paragraph of Article III of the Special Agreement, of June 30, 1921. In making this suggestion, it is thought proper to say that no such letter as alleged has come to the attention of the Agent of the United States, despite diligent search, but naturally this statement can only be made in a negative form. It is for those who assert the existence of this letter addressed to those whom they represent to prove its existence. In the absence of such proof its existence can not be assumed.

If such a promise does exist, which is not yet proven, as indicative of its worth and binding character it must be remembered that it was made "at the time the Stray Settlement was put through in June, 1919,"[2] and before the first formal presentation of the Christiania Group claims on June 23, 1919.[3]

If made at all, this alleged promise, it would appear, was made prior to the time when the Shipping Board was given its first meagre bit of evidence as to the character of the claims, and before the Board's own records concerning the fifteen hulls involved had been gathered together in usable form and put into the hands of the gentlemen representing the Board in the negotiations.

Whatever the facts may be as respects the alleged letter from Commissioner Stevens, there is no doubt about the official position of the United States, with respect to its alleged obligation to settle the claims of the Christiania Group on the basis of the Stray Group settlement, formally communicated to the Norwegian Government after the Stray settlement was made and before it was carried out. The Secretary of State of the United States, Mr. Lansing, made a distinct reservation pointing out that "in reaching this settlement it is to be understood that the Government of the United States is

[1] Norwegian Counter-case, page 28, note 18.
[2] Norwegian Case, page 81.
[3] Norwegian Counter-case, page 27. Covington & Burling to Edward N. Hurley, June 23, 1919, U. S. Counter-case, Appendix, page 241 and 242.

not committed to making a similar settlement with other Norwegian claimants in respect of alleged requisitions by the United States."[1]

In addition to this express and formal reservation from the Secretary of State of the United States to the Norwegian Minister to the United States, the record discloses a memorandum of a conversation between Mr. Breckenridge Long and the Norwegian Minister, on August 9, 1919, in which Mr. Long says:

"I told him that we did not want to be bound by any act in connection with the present contract to make identical arrangements for the other Norwegian tonnage which we had appropriated. He said he appreciated that, but he did not want to waive any rights which his citizens might have, and was simply taking the opportunity to go on record to that effect."[2]

These two diplomatic reservations are nowhere referred to in the Norwegian Counter-case, whose authors seemingly prefer to rely upon hearsay from Mr. Gillen.

While it may be that Commissioner Stevens made some such promise as the Norwegians allege, although the assertion that he did is supported by totally inadequate proof, he was not of the opinion that contracts were requisitioned. In a "Memorandum on the basis of award of just compensation for property taken under the requisition order issued August 3, 1917, by the Emergency Fleet Corporation," Comissioner Stevens said:

"The only property taken was the partially completed ships and the materials on hand applicable to the construction of ships. Just compensation, therefore, is the fair value on August 3, 1917, of the partially completed ships and materials actually requisitioned."[3]

Notwithstanding that the record discloses entirely insufficient support for the Norwegian assertion that the promise was made to them by Commissioner Stevens that the Stray settlement would be the basis of the settlement with the Christiania Group, it is interesting to see what the present claimants would receive if they were treated on the bases suggested by Mr. Stray. This should be especially useful because of the statement that "the Kingdom of Norway simply asks that the principles underlying a settlement with the * * Stray Group be now applied in settling the claims of the Christiania Group."[4]

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[1] Mr. Lansing to Mr. Bryn, August 4, 1919. U. S. Counter-case, Appendix, page 124.

[2] Memorandum of conversation between the Norwegian Minister and Mr. Breckenridge Long, August 9, 1919, U. S. Counter-case, Appendix, page 125.

[3] U. S. Counter-case, Appendix, page 19.

[4] Norwegian Counter-case, page 91.

This present position of the claimants varies materially from that previously taken on their behalf by their counsel, Mr. J. Harry Covington, who said that "the settlement with the Stray Group does not, it seems to me, throw much light upon the question of a proper settlement of the claims of the Christiania Group. The Stray Group received much more than reimbursement."[1]

Further in the same letter Mr. Covington speaks of "$9,439,675.60 as the amount of money that will be payable to the Christiania Group if the basis of the Stray Settlement be adopted * * * A settlement on the above basis was satisfactory to the Stray Group because it gave them more than reimbursement, but the same basis of settlement would work a real hardship against the Christiania Group."[1]

In contending that the Stray award should be the basis of the award to this group, the Norwegian government is asking for an award of $9,439,675.60 according to figures prepared by counsel for the claimants. But it is demonstrable that the present claimants would receive less than this figure when the worth of their claims is measured by Mr. Stray's principles.

(2e) REIMBURSEMENT NOT THE BASIS FOR THE DISTRIBUTION OF THE STRAY AWARD.

Before testing out the value of the Christiania Group claims by Mr. Stray's principles, it is interesting to note that the arbitrators who distributed the Stray award rewarded the members of that group who had not assigned their contracts and penalized those who claimed through assignments, the quantum of the penalty depending upon whether they acquired their claim before the United States entered the war, or after the United States entered the war but before the requisition date, or after the requisition date. The Stray Group may be divided into four sub-groups on this basis, as follows:[2]

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[1] J. Harry Covington to Raymond B. Stevens, July 28, 1919. U. S. Counter-case, Appendix, page 242 at 243.

[2] It should be stated that the principles followed by the Norwegian Arbitration Committee have never been divulged. "The arbitrators will not give any premises for their awards," Norges Rederforbund to the Honorable A. G. Schmedeman, March 1, 1920, U. S. Counter-case, Appendix, page 129; "Arbitration court has all along refused to divulge basis on which distribution of the Stray group settlement was made, giving out only special amount awarded to each claimant," Honorable Lauritz S. Swenson to the Secretary of State, May 4, 1922, U. S. Counter-case, Appendix, page 132.

Those who claimed on the basis of the original contract and not through assignments—

Claim.	Contract Date.	Date Acquired.	% Complete.	Total Expend.[1]	Calc. distr.[2]	% Reimbursed.
4	12-20-16	12-20-16	13.9	$48,787	$458,777.55	943
6	9- 5-16	9- 5-16	30	233,370	914,491.50	391
11	4-25-16	4-25-16	71.1	1,107,575	2,034,113.10	183
12	8- 8-16	8- 8-16	77.9	1,213,389	2,016,359.40	166
13	4-15-16	4-15-16	87.4	1,222,295	2,243,497.05	183
20	8-30-16	8-30-16	94.7	1,190,002	2,226,667.95	187
21	11-29-16	11-29-16	25	417,918	732,376.35	175
25	1-30-16	1-30-16	93.2	830,835	2,655,741.00	319
Avg	7-24-16	.....	61.65	.....	.....	318.375

Those who claimed by assignments before the United States entered the war—

Claim.	Contract Date.	Date Acquired.	% Complete.	Total Expend.[1]	Calc. distr.[2]	% Reimbursed.
5	5-26-16	8-26-16	45	$318,807	$816,035.40	256
7	8-28-16	9-16-16	84.9	1,066,620	1,556,353.65	146
24	1-13-16	3-14-17	17.3	737,000	1,433,364.60	195
26	1-30-16	8-28-16	89.9	373,785	765,020.25	204
27	1-30-16	8-28-16	94.2	526,750	771,782.25	146
Avg	4- 1-16	.....	66.26	.....	.....	189

Those who claimed by assignments after the United States entered the war but before August 3, 1917.

Claim.	Contract Date.	Date Acquired.	% Complete.	Total Expend.[1]	Calc. distr.[2]	% Reimbursed.
1	10-28-16	4-30-17	60.1	$549,730	$540,021.60	98
3	10-14-16	4-16-17	70	727,404	724,096.35	99
8	8-11-16	7-18-17	32.1	1,451,123	1,069,182.60	73
9	10-21-16	7-18-17	20.2	1,807,282	1,510,058.10	83
16	8- 7-16	6-21-17	18.2	1,882,076	1,938,237.60	102
18	9-22-16	5-31-17	42.5	1,216,798	1,416,238.80	116
Avg	9-22-16	.....	40.51	.....	.....	95.16

[1] These figures are taken from the last column of the table printed as part of the testimony of Mr. Charles S. Haight in the Norwegian Case, page 75.

[2] These figures are taken from column 40 of the Stray Chart accompanying the Counter-case of the United States.

Those who claimed by assignments after August 3, 1917—

Claim.	Contract Date.	Date Acquired.	% Complete.	Total Expend.	Calc. distr.	% Reimbursed.
2	10-28-16	9- 5-17	59.9	$596,830	$484,480.05	81
10	7- 5-16	9-21-17	9.3	1,554,753	965,006.40	62
14	5-31-16	9-21-17	69.7	2,806,929	2,067,367.65	73
15	8- 7-16	9- 4-17	12.8	1,881,108	1,921,301.55	102
17	9-26-16	9-20-17	47.3	1,949,916	1,561,194.00	80
19	11-15-16	10- 4-17	3.5	1,423,934	904,034.55	63
22	2-20-17	9-17-17	7	458,475	420,499.80	91
23	3-21-17	9-17-17	6	379,510	353,700.90	93
Avg	10-15-22	.....	26.93	.....	.....	80.625

As already stated (and the fact must be borne in mind in this connection), the settlement of the Stray Group was a lump-sum settlement. The United States made no attempt, in the final settlement, to distinguish among the different claimants. The foregoing unequal distribution of the fund among the claimants with relation to the character and time of acquisition of their respective claims was purely a matter *inter se*, with which distribution and the consequent high percentage allowed in individual cases the United States had nothing to do.[1]

That unequal distribution is therefore all the more significant because it amounts to a recognition by the claimants themselves in a striking way of the inferiority not only of the assigned claims as against the original contracts but especially of the inferiority of all claims assigned *after August 3, 1917.*

Thus it is seen that the Stray claimants who did not claim by assignment but who held their contracts average 318.375% of reimbursement. Those who claimed by assignment, but received the assignments through which they claimed before the United States entered the war, average 189% of reimbursement. Those who claimed by assignments secured after the United States entered the war but

[1] Mr. Bryn to the United States Shipping Board: "I must protest against any attempt to apportion the lump sum on the individual claims as such procedure would be absolutely against the said agreement signed by the Shipping Board, and any such intended specification now on the part of the Shipping Board might lead to great dissatisfaction among the Norwegian contract owners who have to divide the lump sum among themselves and who might do this along other lines than the Shipping Board. I must caution against any action on the part of the Shipping Board to make any attempted allotment in contravention of the lump sum agreement of June 3, 1919." U. S. Counter-case, Appendix, page 126.

before the requisition date did not quite get reimbursement, but average 95.16% of it. Those who claimed by assignments after August 3, 1917, the requisition date, average only 80.625% of reimbursement.

Nor can it be said that this difference in percentage of reimbursement is determined by any marked difference as between these sub-groups in the average contract dates or in the average percentage of completion on the requisition date as the figures set out above, for each sub-group, easily demonstrate at a glance.

Thus it is demonstrated that the Norwegian statement that "full reimbursement was also awarded for the 27 contracts owned by the members of the Stray group of Norwegian shipowners,"[1] which has never been substantiated by any analysis of the figures worthy of the name, is not borne out by the actual distribution of the Stray award.

As an interesting commentary on the Norwegian claim that the Stray Group received reimbursement it is interesting to note that Mr. Stray himself, in his two claims, numbers 8 and 9 in the third sub-group above, received only 73% and 83% of reimbursement respectively.

(2f) WHAT THE CHRISTIANIA GROUP WOULD RECEIVE ON THE BASIS OF MR. STRAY'S PROPOSALS.

It will be remembered, as has been pointed out,[2] that this settlement was not reached upon any basis mutually agreed upon by the parties, but was a compromise settlement. The United States does not now admit that there was any mutually agreed basis for this settlement, but, merely for the purpose of argument, and because Norway has raised the issue, proceeds to demonstrate what the present claimants would receive if their compensation were calculated on the principles contended for by Mr. Stray.

Mr. Stray's suggested bases of an award are enumerated in three vouchers with his letter of May 5, 1919, to Commissioner Stevens. His first plan, based on the market value of tonnage as of August 3, 1917, brought a total of $39,048,605.25.[3]

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[1] Norwegian Case, page 69.

[2] Ante page 79.

[3] Voucher I, U. S. Counter-case, Appendix, page 112.

In giving Mr. Stray's figures interest has not been included, nor has interest been included in the calculations advanced by the United States, the general subject of interest being treated elsewhere.

Setting out the Christiania Group in the same form the following figures are arrived at:

Commercial value of prompt tramp tonnage in Norway as of August 3, 1917 (which value also corresponded with the price offered by other nations)	$300.00
There were no tankers in the Christiania Group claims.	
Less reduction for about 20 months at $6.36 (actual average delivery of 12 ships[1] April 18, 1919)	127.20
	$172.80
81,350 tons deadweight at $172.80	$14,057,280
Less unpaid installments	9,429,265
	$4,628,015

Thus, applying Mr. Stray's first test, which was based "on the value of the tonnage on a commercial basis, and on the actual time of delivery of the ships to the Emergency Fleet Corporation," settlement of $4,628,015.00 would have been made in the case of the Christiania Group Claims.

In his just compromise settlement, "based on the price of $300 as for Norwegian tramp tonnage," Mr. Stray reduced his total to $35,257,514.55.[2] On this basis the Christiania Group would have received $5,065,264.04—

Claim for completed work based on the value of tramp tonnage as above, (average price of ready tonnage)	$300.00
Less deduction from Aug. 3, 1917, to the average date of delivery, April 18, 1919, viz. 20½ mo. at $6.36	130.38
	$169.62
Less allowance to Shipping Board for overtime worked advancing delivery by, say, one month	6.36
Norwegian Price	$163.26
Average Contract Price	149.28
	$312.54
At ½	$156.27
Claim for 15.24% "completed work, corresponding with 12,398 tons, at $300.00	$3,719,400.00
84.76% undone work, corresponding with a tonnage of 68,952 tons, at $156.27	10,775,129.04
	$14,494,529.04
Less unpaid installments	9,429,265.00
	$5,065,264.04

[1] Not estimating the delivery date of the three uncompleted New Jersey hulls reacts to the advantage of the Norwegian claimants upon this averaging comparison. The Christiania Group, having more small ships than the Stray Group, would have earned on an average $6.36 per d. w. t. per month under "time form," as compared to the average $6.18 per d. w. t. per month for the Stray Group.

[2] Voucher II, U. S. Counter-case, Appendix, page 113.

By his third plan, "Voucher III, Settlement along Political Economic Lines"[1] Mr. Stray comes to about the same result as by his Voucher II, namely, $35,244,508.75.[2]

The Christiania Group would have received $3,184,052.50 by the same plan, as follows:

Claim for a prompt tramp steamer in accordance with market value in Norway as of August 3, 1917, which was really established on a commercial basis, and which corresponded with price paid by others	$300.00
Less deduction from August 3, 1917, to the average date of delivery April 18, 1919, namely for 20-1/2 months at $6.36	130.38
	$169.62
Less allowance to Shipping Board for overtime worked advancing delivery by, say, one month	6.36
	$163.26
81,350 Tons at $163.26	$13,281,201.00
Less unpaid installments	9,429,265.00
	$3,851,936.00
Less extra payments to the Yards	667,883.50
	$3,184,052.50

Are the Christiania Group claimants now willing, as was "the expectation and understanding," to accept an award on "whatever principles were arrived at for settling that [Stray] Group"?[3] If so, as has been demonstrated, they would receive $4,638,015 on the basis of the last Stray offer before the compromise offers, or $5,065,264.04 and $3,184,052.50 respectively on the basis of the first and second compromise offers, Vouchers II and III respectively, less some sum, uncertain and difficult of calculation, corresponding to the amount Mr. Stray was willing to forego to reach a compromise.

It is urged, too, that Mr. Stray's Vouchers II and III are the best evidence possible of the Norwegian conception of the basis of that award because they were the two offers last preceeding the settlement, and the probable basis from which Mr. Stray compromised. Subsequent statements as to the basis of this award are not thought to bear much weight as compared with Mr. Stray's contentions.[4]

[1] U. S. Counter-case, Appendix, page 115.

[2] Voucher III, U. S. Counter-case, Appendix, page 115.

[3] Norwegian Counter-case, page 27.

[4] As showing the basis of the Stray Settlement, the Norwegian Case quotes Mr. Haight as saying "I think that the underlying principle was that we were to receive the real loss which had been sustained, reasonably close to the loss as the result of the destruction of our contracts." Norwegian Case, page 76.

Attention should be called to the fact that preceeding this statement quoted Mr. Haight said: "In my judgment, the Settlement was made on a compromise between the scrapiron theory, which I think Mr. Stevens wholly discarded—and the value of the contract theory. In other words, had we received the price for which we could

3. The John M. Connelly Settlement.

The John M. Connelly settlement arose out of the requisition by the Fleet Corporation on August 3, 1917 of a tanker, hull number two at the Pennsylvania Shipbuilding Company, named the "*John M. Connelly.*" It is contended by the Norwegian Government without a shred of supporting evidence that "the Shipping Board requisitioned the contract." This statement is refuted by the formal contract of settlement between the Fleet Corporation, the Continental Transportation & Oil Company, the owner on August 3, 1917, and the John M. Connelly Steamship Company, Inc., to which the Continental Transportation & Oil Company assigned the contract on September 4, 1917, "pursuant to its previous arrangements."[1]

(3a) REQUISITION OF CONTRACTS NOT ADMITTED.

In this settlement contract it is not claimed by the former owners that the contract was requisitioned but "it is claimed that the United States, acting through the Fleet Corporation * * * requisitioned the said hull No. 2 and the materials therefor by an order dated August 3, 1917."[2]

In the next paragraph of the settlement contract it is said that "the Fleet Corporation has determined upon and fixed the sum of Eight Hundred Seventy-three Thousand Two Hundred Forty-eight dollars ($873,248.00) as just compensation for the said hull and materials."[2]

Thus it is seen that the claimant did not claim that the contract was requisitioned, and that the Fleet Corporation made its award "as just compensation for the said hull and materials" and not for the contract stated by Norway to have been requisitioned.

In addition to this there appears in the Appendix to the Counter-case of the United States the statement of Mr. Charles F. Dutch,

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have sold those contracts to the Cunard Line and the French Line and to 40 other people, on the 2nd day of August, the Shipping Board would have paid us much more than thirty-four and one-half million dollars. They did compromise it at that figure." U. S. Counter-case, page 428.

Following his statement as quoted in the Norwegian Case Mr. Haight stated that he was not present "prior to the actual agreement of settlement being drawn up" and that "the actual discussion, when it go down to figures was carried on by Mr. Stray himself. I think during most of that time I was in Europe. * * * I only know that I had discussed the principles and the proposition that those contracts had been taken with Mr. Stevens, both in London and here, and I think that he was convinced that the contract had been taken." U. S. Counter-case, Appendix, page 429.

[1] John M. Connelly settlement contract of January 9, 1920, U. S. Counter-case, page 200.

[2] John M. Connelly settlement contract, U. S. Counter-case, page 200.

who made "the figures on which the [John M. Connelly] award was based,"[1] that "their contract for the construction of the hull was not included in the requisition order, was not taken, and so was not considered as a basis for just compensation in this case."[1]

(3b) REIMBURSEMENT OF RESALE PREMIUMS NOT MADE.

Again, it is asserted by the Norwegian Government, further without a shred of supporting evidence, that this settlement reimbursed the claimant "in full for its expenditures including the premium paid to Hannevig"[2] who had assigned the contract to the Continental Transportation & Oil Company. Mr. Dutch clearly states the method by which the award of $873,248 was arrived at as follows:

"The value of the vessel as a tanker, if completed, was assumed on a liberal basis to be $200 per deadweight ton. The stage of completion of the vessel at the date of requisition was according to careful reports 65%. The deadweight tonnage of the vessel was taken as 7,300. The value of the hull and materials taken was therefore, figured to be expressed as follows, 7,300 d. w. t. x 65% x $200.=$949,000. As the former owners, however, had not paid 65% of the contract price to the builder, but only 50%, the difference due the builder, of 15% of the contract price, was taken from the builder, (who was separately settled with). This 15% of the contract price of $930,000 was therefore deducted, namely, $139,500 leaving a balance of $809,500. On this amount of $809,500 interest was computed at 4½% for one year and nine months, namely from August 3, 1917 to May 3, 1919, (the latter date being approximately the date when I expected the Board would make the award of compensation) making $63,748, making the total award of compensation $873,248, which is the figure stated in the agreement of January 9, 1920, under which a 75% settlement in pursuance of the statute was, I believe, made.

"*I wish to state definitely and positively that in making the above estimates and particularly in determining the basic value of $200 per d. w. t. no consideration whatever was given to the original contract rate, nor to the rate involved in any transfers of the original contract, since in my opinion none of these rates had any bearing on the legal issue of just compensation under the statute and the constitution of the United States.*"[3]

Thus it is seen that this settlement was not made on the basis of reimbursement as the Norwegian Counter-case would have this honorable Tribunal believe, but on the basis of a $200 per d. w. t., valuation for the vessel, which was a tanker, with a pro rata de-

[1] Charles F. Dutch to Wm. C. Dennis, May 12, 1922, U. S. Counter-case, Appendix, pages 202 and 203.

[2] Norwegian Counter-case, page 84.

[3] Charles F. Dutch to William C. Dennis, May 12, 1922, U. S. Counter-case, Appendix, page 202 at 203. Italics ours.

duction for the percent incomplete on August 3, 1917, the requisition date, and a further deduction for the amount due the shipbuilder on August 3, 1917, but unpaid, with simple interest at 4½% from the requisition date to the assumed date of the award. No consideration whatever was given to the contract price of the vessel or to the premiums paid by the claimant for the contract.

It should be remarked here that this is not one of the "settlements satisfactory to the claimants" referred to at page forty-four in the Case of the United States. Under the terms of this so-called settlement, which was unsatisfactory to the claimant, 75% of the sum awarded was paid, as provided for in the third paragraph of the Emergency Shipping Fund Provision, leaving the claimant free to sue the United States for "such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation." [1]

This so-called settlement is informative and valuable, therefore, not as a precedent as one of the "settlements satisfactory to the claimants" [2] but as demonstrative of the fact that the Shipping Board was not willing to pay for contracts, and did not use reimbursement as the measure of just compensation.

4. The Mitsui Settlement.

The account of this settlement in the Norwegian Case begins with the bald statement: "The claimant obtained in excess of $285 per ton." [3] There is no foundation in the record for this assertion.

The ship concerned in this settlement is the "*Nikkosan Maru*," hull No. 9, at the Skinner & Eddy Corporation. By contract dated July 3, 1917, Mitsui & Co. agreed to pay $2,500,000 for this vessel and on July 10, 1917, advanced $1,750,000 to the shipbuilder on account of the purchase price. Thereafter on August 3, 1917, the Fleet Corporation requisitioned this hull and the materials therefor.

(4a) REIMBURSEMENT NOT THE BASIS.

The inference intended to be drawn from the statement in the Norwegian Case that Mitsui & Co. received in excess of $285 per ton for this vessel is that the claimant was at least reimbursed for all

[1] U. S. Case, Appendix, page 88 at page 89.
Suit has since been brought in the Court of Claims in accordance with the statute.
[2] U. S. Case, page 44.
[3] Norwegian Case, page 76.

its expenses. An analysis of the settlement demonstrates this inference to be entirely without foundation in fact.

On September 26, 1918 the Fleet Corporation advanced to Mitsui & Co. $900,000 on account of the just compensation due it for the requisition of this hull.[1] By a final settlement, dated July 21, 1919, the Fleet Corporation paid Mitsui & Co. $930,000 in addition to the amount already paid, making in all $1,830,000 in final settlement with Mitsui & Co. for all claims arising out of the requisition of the "*Nikkosan Maru.*" This is the full amount paid by the Fleet Corporation to Mitsui & Co. on account of this vessel.

It is seen that the sum of the two amounts paid to Mitsui & Co. by the Fleet Corporation exceeds by $80,000 the amount advanced by Mitsui & Co. to the shipbuilder as part payment for the construction of this vessel. Interest at 6%. (which Mitsui & Co. recites it actually paid)[2] on its advance to the shipbuilder from the date it was paid to September 26, 1918, plus interest from that date on $850,000 (the amount remaining due Mitsui & Co. after subtracting from Mitsui & Company's advance to the shipbuilder the $900,000 paid to Mitsui & Co. by the Fleet Corporation on September 26, 1918) to July 21, 1919, the date of the final settlement, is approximately $169,375.00.

Thus it is seen that the amount paid by the Fleet Corporation to Mitsui & Co. in excess of Mitsui & Company's payment to the shipbuilder, namely $80,000 is not even sufficient to repay to Mitsui & Company interest which it paid for the sum advanced to the shipbuilder. This is not reimbursement. This is not even a refund of progress payments with interest. Clearly the statement that "the claimant obtained in excess of $285. per ton"[3] is entirely misleading.[4]

(4b) REQUISITION OF CONTRACTS NOT ADMITTED.

In its seven lines of narrative pertaining to the Mitsui settlement the Norwegian Case does not state that the Mitsui contract was requisitioned and paid for, but in the four pages of testimony of Martin J. Gillen, printed in the Norwegian Case concerning the Mitsui set-

[1] U. S. Counter-case, Appendix, page 196 at 198.
[2] Article VII, U. S. Counter-case, Appendix, page 434.
[3] Norwegian Case, page 76.
[4] The "*Nikkosan Maru*" was an 8800 ton ship. Claimant received $1,830,000, or $207.95 per ton. It is only if we add to this the unpaid balance of the purchase price, i. e., $750,000, or $85.22 per ton, which of course claimant did not receive, that a payment in excess of $285.00 per ton is attained.

tlement, it seems to be the Norwegian contention[1] that in the Mitsui settlement the Shipping Board "waived the principle established by Mr. Cotton and took over the contract."[2]

In the claim filed by Mitsui & Co. it is not even claimed that the contract was requisitioned but "that on the third day of August, 1917 * * * the United States Shipping Board Emergency Fleet Corporation duly requisitioned the said steamships "*Lieutenent de Missiessy*" and "*Nikkosan Maru*" then under construction, and the materials therefor."[3]

In the final contract of settlement it is stated in paragraph numbered 2 that "on August 3, 1917 the Fleet Corporation * * * requisitioned the said two steel cargo vessels * * * together with the materials therefor and commitments in connection therewith."[4]

It is further stated in paragraph numbered 4 that "the owner has duly lodged this claim with the Fleet Corporation for just compensation on account of the requisitioning of the said *Maru No. 2* (*Nikkosan Maru*) and materials therefor."

In paragraph numbered 6 it is stated that the Fleet Corporation "has determined that One Million Eight Hundred and Thirty Thousand Dollars ($1,830,000) is just compensation for all property tangible or intangible, of whatsoever kind or description requisitioned and/or acquired by the Fleet Corporation in connection with the taking over of the said *Maru No. 2* (*Nikkosan Maru*) and materials therefor belonging to the Owner."[5]

"In consideration of the premises and of the mutual promises and agreements" contained in the contract "the owner hereby specifically releases the Fleet Corporation, the United States Shipping Board and the United States of America of and from any and all claims, demands and/or liability of every sort and nature whatsoever arising or which may arise in any manner whatsoever out of, or directly or indirectly in connection with, the requisitioning by the Fleet Corporation, the United States Shipping Board or the United States of America of all or any of the property hereinbefore referred to or described, including any claim whatsoever for any alleged requisitioning of the said

[1] Norwegian Case, pages 76–79 and 109–110.
[2] Testimony of Martin J. Gillen as printed on page 76 of the Norwegian Case.
[3] U. S. Counter-case, Appendix, page 433.
[4] Settlement agreement of July 21, 1919 U. S. Counter-case, Appendix, page 196.
[5] U. S. Counter-case, Appendix, page 198.

contract of July 3, 1917, between the Owner herein and the Skinner & Eddy Corporation."[1]

To sum up, there is no claim that contracts were requisitioned; there is no admission that contracts were requisitioned; the sum paid in settlement was not paid for contracts either requisitioned or alleged to have been requisitioned, and even the release only covers "any *alleged* requisitioning of the said contract."[2]

Mr. Gillen's statement on which the Norwegian Government relies was apparently made hastily and in ignorance of the facts, which is easily understood for he says, as quoted in the Norwegian Case "and on this Japanese matter, I dug this up in the last few days."[3]

(4c) RESALE AFTER AUGUST 3 NOT RECOGNIZED.

But perhaps the principal point of interest in this settlement is the treatment accorded an attempted transfer of its rights by Mitsui & Co. to the Compagnie Generale Transatlantique, subsequent to the requisition date.

In its claim Mitsui & Co. recites that on September 19, 1917, it sold all its rights in the "*Nikkosan Maru*" to the French Company,[4] that the Fleet Corporation refused to allow such transfer,[5] that Mitsui & Co. had to repay to the French Company with interest the sums paid by it as purchase price,[6] and that it lost by this refusal of the Fleet Corporation $475,625.[6]

In making its claim, Mitsui & Co. claimed this amount as due it on account of the requisitioning of the "*Nikkosan Maru*," but as has been demonstrated[7] the settlement with Mitsui & Co. carried with it a sum only sufficient to repay to it its advances to the shipbuilder with a small allowance insufficient to reimburse it for interest. No sum was paid in reimbursement of this claim of $475,625.

It is seen, then, that Mitsui & Co. was not one of the "others" to which the Fleet Corporation made "full reimbursement,"[8] but that this settlement exemplifies three contentions of the United States—

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[1] Paragraph numbered A, U. S. Counter-case, Appendix, page 198.
[2] Italics Ours.
[3] Norwegian Case, page 110.
[4] U. S. Counter-case, Appendix, page 433.
[5] U. S. Counter-case, Appendix, pages 433 and 434.
[6] U. S. Counter-case, Appendix, page 434.
[7] Ante page 95.
[8] "It has been shown that the Shipping Board under the administration of Mr. Hurley—a Board which knew what it had done and what it had intended by its acts—made full reimbursement to the Cunard Company and the Stray Group of Norwegian Shipowners, as well as to others" Norwegian Case, page 125.

that contracts were not requisitioned, that reimbursement was not the rule of the Hurley administration in settling requisition claims, and that transfers after August 3, 1917 were not recognized.

c. TYPICAL SHIPPING BOARD SETTLEMENTS NOT CITED IN THE NORWEGIAN CASE.

1. The Hamilton Settlement.

Equality of treatment for all claimants is one of Norway's cherished precepts as proclaimed by the Norwegian Counter-case in the following dictum:

"The authorities charged by law to pay just compensation for the requisitioned property *have uniformly paid for contract values.* * * *Equality in equity. By general law these claimants are entitled to the same measure of compensation accorded to others similarly placed.*"[1]

In searching for other claimants "similarly placed" the United States has been unsuccessful, as no other claimants have appeared with claims based on speculative transactions tainted with the methods of a Christoffer Hannevig.

However, there is one case, the Hamilton case, which serves well both as a parallel and a contrast. It is singularly appropriate in this connection because to a certain point the circumstances in the case of Carl W. Hamilton were so closely parallel with the circumstances in the case of Christoffer Hannevig, who was so deeply concerned in the transactions leading up to each and every one of the fifteen Christiania claims.

(1a) THE CASES OF HANNEVIG AND HAMILTON ARE PARALLELED AS FOLLOWS:

CHRISTOFFER HANNEVIG.	CARL W. HAMILTON.
1. Hannevig owned a controlling interest in the Pusey & Jones Company and the New Jersey Shipbuilding Company.[2]	1. Hamilton, with a single associate, owned a controlling interest in the Chester Shipbuilding Company, Ltd.[3]
2. In June of 1917, Hannevig, acting through two of his dummy corporations, made contracts with the Pusey & Jones Company and the New Jersey Shipbuilding Company for the construction of nine ships.[4]	2. In April of 1917, Hamilton made contracts between himself as an individual and the Chester Shipbuilding Company, Ltd., for the construction of fourteen ships.[5]

[1] Norwegian Counter-case, page 77. Italics ours.
[2] U. S. Case, pages 45–46.
[3] Paragraph numbered three, Memorandum of Chester W. Cuthell, December 10, 1917. U. S. Counter-case, Appendix, page 165 at 166.
[4] U. S. Case, Appendix, pages 638 to 650.
[5] U. S. Counter-case, Appendix, page 133.

3. Not a single keel had been laid for Hannevig's nine ships when they were requisitioned on August 3, 1917.[1]

4. At the time of requisitioning, Hannevig, through his dummy companies, had paid to his shipbuilding companies $284,337.50 as progress payments on his nine ships.[2]

5. The Fleet Corporation disregarded Hannevig's nine contracts, and entered into new contractual arrangements with the shipbuilders.[3]

6. The last owners of Hannevig's nine contracts were offered a settlement reimbursing them for every cent paid by former owners to the shipbuilders.[7]

7. The claimants under the nine Hannevig contracts *refused to accept the offer to settle by reimbursing progress payments, and are now demanding $3,458,170.05 in excess of amounts paid to the shipbuilders.*

8. In his capacity as shipbuilder Hannevig has been offered a settlement for the construction of the completed ships at a price far more than the original contract price.[9]

3. Not a single keel had been laid for Hamilton's fourteen ships when they were requisitioned on August 3, 1917.[2]

4. At the time of requisitioning, Hamilton had paid to his shipbuilding company $1,163,750 as progress payments on his fourteen ships.[4]

5. The Fleet Corporation disregarded Hamilton's fourteen contracts, and entered into new contractual agreements with the shipbuilder.[6]

6. The last owner of Hamilton's fourteen contracts was offered a settlement reimbursing him for every cent paid by former owner to the shipbuilder.[8]

7. The claimant under the fourteen Hamilton contracts *accepted the offer to settle by reimbursing progress payments with interest at 6% and abandoned his claim for $551,250 in excess of progress payments.*[5]

8. In his capacity as shipbuilder Hamilton was compelled to complete the fourteen ships under a new contract price which aggregated $1,360,800 less than the original contract price.[10]

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[1] Column 13, Chart 1, U. S. Case.

[2] Thos. D. Pitts to William C. Dennis, May 11, 1922, U. S. Counter-case, Appendix, page 168.

[3] Column 32, Chart 1, U. S. Case.

[4] Carl W. Hamilton's release of the Emergency Fleet Corporation, U. S. Counter-case, Appendix, page 160–161.

[5] Pusey & Jones Company—H. E. Norbom to the Emergency Fleet Corporation, August 23, 1917, accepting the form letter of August 22, 1917, U. S. Case, Appendix, page 227.

New Jersey Shipbuilding Company—F. J. Bowles to Ralph James M. Bullowa, December 11, 1917, U. S. Case, Appendix, page 275, and Ralph James Bullowa to C. W. Cuthell, December 17, 1917, U. S. Case, Appendix, pages 276–277.

[6] U. S. Counter-case, page 140.

[7] Report of the Requisition Claims Committee, December 2, 1919, U. S. Case, Appendix, pages 186–189.

[8] Carl W. Hamilton's release of the Emergency Fleet Corporation, U. S. Counter-case, Appendix, page 160.

[9] Resolution awarding just compensation to Pusey & Jones, March 13, 1920, U. S. Case, Appendix, 345.

[10] U. S. Counter-case, Appendix, page 140 and 155.

(1b) WHAT THE HAMILTON SETTLEMENT PROVES.

The so-called Hamilton settlement shows clearly the treatment accorded to an American owner whose situation in many respects was almost exactly parallel with the situation of Christoffer Hannevig. The settlement emphasizes the following facts:

(a) That the former owner's contracts were not requisitioned;

(b) That the original contracts were not made the measure of the reciprocal obligations between the Fleet Corporation and the shipbuilder, but that entirely new and different contracts were made;

(c) That the policy of the Hurley Administration was not to pay for the value of contracts, but to pay only for the things actually requisitioned;

(d) That contrary to the assertion in the Norwegian Counter-case, the authorities of the Fleet Corporation have not "uniformly paid for contract values;"[1]

(e) That in the largest single settlement with an American owner, the Hurley administration rejected all claims for amounts in excess of the value of ships or materials taken by requisition;

(f) That the Hurley administration not only refused to recognize former owner's contracts but insisted on making entirely new contracts with different terms, different prices, different and additional requirements, and according to specifications that were independent of and different from the specifications that were attached to the original contracts.

The Hamilton case has particular importance, because the situations of Hamilton, as an American owner, and Hannevig, as a Norwegian owner, are so nearly identical.

(1c) THE HAMILTON CONTRACTS.

Carl W. Hamilton and W. Averill Harriman acquired a controlling interest in the Chester Shipbuilding Company in February, 1917.[2]

On April 17, 1917, Mr. Hamilton, acting in his individual capacity, made contracts with the Chester Shipbuilding Company for the construction of fourteen cargo ships of 9000 deadweight tons each, at a price of $175.00 per ton, with an option to have tankers sub-

[1] Norwegian Counter-case, page 77.

[2] Paragraph numbered 3, Memorandum of Chester W. Cuthell, December 10, 1917, U. S. Counter-case, Appendix, page 165 at 166.

stituted at $200.000 per ton.[1] Initial payments of $83,125.00 on each ship were made by Hamilton to the shipbuilding company, the aggregate payments being $1,163,750.00 up to the time of requisition.[2]

On August 3d, 1917, all of the fourteen ships were requisitioned, with fourteen other ships then being built in the Chester yard. The requisition was strictly limited to the ships under construction, materials assembled therefor, and commitments for material on account of the ships.

The Fleet Corporation refused to recognize the contracts in existence on August 3, 1917, as establishing reciprocal obligations between itself and the shipbuilder, and beginning with August 22, 1917, the Fleet Corporation established entirely new relations with the shipbuilder.

On October 10, 1917, Mr. Hamilton filed a claim for $1,715,000.00 on account of the fourteen ships, the contracts for which he owned. This was $551,250 in excess of the initial payments to the shipbuilder. The Fleet Corporation rejected all claims in excess of initial payments.

(1d) THE SETTLEMENT WITH HAMILTON.

Because Hamilton was not only owner but shipbuilder, just as in the case of Hannevig, the Fleet Corporation insisted on a settlement that would not only dispose of the Hamilton claim as owner but also create new and definite contract requirements to cover the construction of the fourteen requisitioned ships. This new contract for construction was to take the place of the statutory order of August 22, 1917, accepted by the shipbuilder.

Accordingly, under date of November 21, 1917, the Fleet Corporation made an agreement with the Chester Shipbuilding Company[3] which was predicated on the payment to Carl W. Hamilton by the Fleet Corporation of $1,163,750.00 plus interest at 6%.

The agreement of November 21, 1917, fixed a tentative price of $170.00 per deadweight ton. This was $5.00 per ton less than the original contract price. The contract provided for a later adjustment of prices and terms.

In accordance with the terms of the November agreement, Mr. Hamilton accepted as just compensation for the requisitioning of his

[1] U. S. Counter-case, Appendix, pages 134 and 136.
[2] U. S. Counter-case, Appendix, pages 160–161.
[3] U. S. Counter-case, Appendix, page 155.

fourteen vessels the return of the $1,163,750 which he had paid to the shipbuilder, plus $45,912.00 as interest.

On December 5, 1917, he gave a release to the Emergency Fleet Corporation[1] covering every conceivable claim on account of the requisitioning of August 3d. The Hamilton release is significant in that it is so phrased as to negative any theory that the contracts had been requisitioned. This is shown by a part of the preamble, as follows: "Whereas, the fourteen (14) vessels, to be constructed under the aforesaid fourteen (14) contracts, were requisitioned by the United States Shipping Board Emergency Fleet Corporation, * *"[2]

Here, it will be noted, that a sharp distinction is made between vessels requisitioned and contracts under which they were to have been built. This distinction is maintained throughout. In the last paragraph of the preamble there is the following statement:

" * * said claim being based upon the requisitioning, by said United States Shipping Board Emergency Fleet Corporation, of the said fourteen (14) vessels, to be constructed by the Chester Shipbuilding Company, Limited, for said Carl W. Hamilton, under the aforesaid fourteen (14) contracts * *;"[3]

The release first discharged the United States of America from any obligation "based upon, or, in any way, arising out of, the requisitioning, by the United States Shipping Board Emergency Fleet Corporation, by order dated the 3rd day of August, 1917, of the fourteen (14) vessels, to be constructed for me under the fourteen (14) certain contracts, described in the preambles hereof, * *".[4]

By way of contrast, it may be mentioned that Hamilton in a separate release to the Chester Shipbuilding Company, Ltd., did not release on account of the vessels, but on account of the contracts.[4]

(1e) THE FINAL CONTRACT WITH THE BUILDER.

In accordance with the terms of the November contract providing for later adjustments, the Fleet Corporation and the Chester Shipbuilding Company, Ltd. made a new contract, known as No. 518, under date of January 17, 1919. This contract was careful in its phraseology to limit the effect of the requisitioning to the

[1] U. S. Counter-case, Appendix, page 160.
[2] U. S. Counter-case, Appendix, page 161.
[3] U. S. Counter-case, Appendix, page 162.
[4] U. S. Counter-case, Appendix, page 163.

vessels and the materials therefor. Paragraph 2 of the contract said:

"On August 3, 1917, the Fleet Corporation, acting in accordance with the powers conferred upon it by the Urgent Deficiency Act of June 15, 1917, and the Executive Order of July 11, 1917, *duly commandeered all said vessels under construction and the materials therefor.*"[1]

This contract No. 518 is sufficient refutation of the declaration in the Norwegian Case that the original contract with the former owner measured the reciprocal obligations between the Fleet Corporation and the shipbuilder.[2]

The contract rewrote in slightly modified form the agreement of November 17. The contract thus made between the Fleet Corporation and the shipbuilder is in striking contrast with the original contract with the former owners. Beginning with progress payments, the terms are made entirely different.[3]

The delivery dates were changed.[4] The provisions for trials and acceptance were different and there was also different provision for the purchase of turbines, boilers and steel.[5]

The original contracts contained no wage provisions, whereas the new contracts made by the Fleet Corporation contained elaborate provision concerning wages, conditions of employment and over-time.[6] There was very little in common between the new contract and the original contract.

One important change made in contract No. 518 was still further to reduce the contract price for cargo ships. The November contract which established a price of $170.00 per ton did not cover all twenty-eight of the requisitioned ships. It covered only the fourteen Hamilton cargo steamers. Contract No. 518 covered the twenty-eight ships and fixed an average price of $170.63 per deadweight ton. This price as distributed on the contract was $194.30 per deadweight ton for tankers and $164.20 per deadweight ton for cargo ships.[7]

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[1] U. S. Counter-case, Appendix, page 141. Italics ours.

[2] Norwegian Case, page 4.

[3] Compare the contract between Carl W. Hamilton and the Chester Shipbuilding Company, U. S. Counter-case, Appendix, page 133 at 134 with Article IV of the contract between the Emergency Fleet Corporation and the Chester Shipbuilding Company, U. S. Counter-case, Appendix, page 140 at 144 and 145.

[4] Idem, U. S. Counter-case, Appendix, page 133 at 134 with U. S. Counter-case, Appendix, page 140 at 143.

[5] Idem, U. S. Counter-case, Appendix, page 133 with U. S. Counter-case, Appendix, page 140 at 144.

[6] See Article VIII½, U. S. Counter-case, Appendix, page 148.

[7] U. S. Counter-case, Appendix, page 139–140.

This final reduction in the contract price for the fourteen Hamilton ships brought the price down $10.80 per deadweight ton below the original contract price. In the aggregate for the fourteen ships this amounted to $1,360,800.00.

(1f) APPLICATION OF NORWEGIAN PRINCIPLE WOULD GIVE AWARDS OF ABOUT ONE-TENTH OF AMOUNTS NOW CLAIMED.

The application of the principle laid down to the effect that the Norwegian claimants are entitled to the same measure of compensation accorded to others similarly placed would as shown by the Hamilton case result in simple reimbursement of progress payments plus interest. This would give the claimants about one-tenth of the amount they claim.

The total claim on account of the nine Pusey & Jones ships is $3,857,725.35.[1] This is analyzed as follows:

Progress payments	$284,337.50	
Interest on progress payments	115,217.80	
Total, account progress payments		$399,555.30
Premium paid by claimant	$2,461,246.88	
Interest claimed on premium	996,925.17	
Total claimed in excess of progress payments		3,458,170.05
Grand total claimed		3,857,725.35

(1g) HURLEY ADMINISTRATION DENIED HAMILTON CLAIM FOR EXCESS OVER PROGRESS PAYMENTS.

The Hamilton settlement shows conclusively that the Fleet Corporation did not consider contract values at all. In fact, the Fleet Corporation rejected the Hamilton claim for $551,250.00 in excess of progress payments made. The December 10, 1917, report by Chester W. Cuthell, General Counsel, shows this rejection and gives generally the history of the case and the basis of settlement.[2]

2. The Santa Tecla Settlement.

Just as it has been seen that Carl W. Hamilton received as full and just compensation for the requisition of ships and materials, his progress payments with interest at 6%, so fared W. R. Grace & Co. the owner of the "*Santa Tecla*" which was hull No. 206 at the New York Shipbuilding Company. This hull and certain material therefor were requisitioned by the general requisition order of August 3, 1917.[3]

[1] Norwegian Case, page X.
[2] U. S. Counter-case, Appendix, pages 165–167.
[3] Settlement contract between the Emergency Fleet Corporation and W. R. Grace & Co., June 11, 1918;—Paragraph 3, U. S. Counter-case, Appendix, page 186.

(2a) NOT BASED ON REIMBURSEMENT BUT ON REFUND OF PROGRESS PAYMENTS WITH INTEREST.

In the formal contract of settlement it is recited in paragraph 2 that prior to the requisition date W. R. Grace & Co. had paid to the shipbuilder on account of the construction of the "*Santa Tecla*" $99,136.80.[1]

It is further recited in paragraph 4 that as just compensation for the requisitioning of this hull and materials the Fleet Corporation has determined upon the sums paid by W. R. Grace & Co. as progress payments plus simple interest at 6% per annum from the dates on which progress payments were made.[1]

It is further recited in paragraph 5 that "the amount so determined by the Fleet Corporation as above set forth is satisfactory to the undersigned, W. R. Grace & Co." and further, in paragraph 9 W. R. Grace & Co. "does by the final execution and delivery of this agreement to said Fleet Corporation acknowledge receipt of said sum with interest and accept same as full and just compensation for said boat."[1]

So it is seen that W. R. Grace & Co., an American citizen, received as full and just compensation for the requisitioning of its ship a refund of its progress payments to the shipbuilder, plus simple interest at 6% per annum from the dates on which the various progress payments were made.

To demonstrate that the Santa Tecla settlement is not one of "the earlier settlements by the Shipping Board of claims growing out of the requisition and down to the latter half of the year 1919 [which] were made in accordance with the principle of reimbursement"[2] is a simple matter.

(2b) CONTRACT NOT REQUISITIONED.

In paragraph 3 of the formal contract of settlement it is recited that the Fleet Corporation "duly requisitioned said steamship "*Santa Tecla*," hull No. 206, New York Shipbuilding Corporation, and certain material therefor as of August 3, 1917."[3]

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[1] Formal contract of settlement between W. R. Grace & Co. and Emergency Fleet Corporation, June 11, 1918—U. S. Counter-case Appendix, page 186 to 188.

[2] Norwegian Case, page 68.

[3] Settlement Contract of June 11, 1918 between the Emergency Fleet Corporation and W. R. Grace & Co.—U. S. Counter-case, Appendix, page 186.

The Fleet Corporation made its award as compensation for "said boat"[1] and W. R. Grace & Company accepted the award "as full and just compensation *for said boat*"[2]

No mention is here made of requisitioning of contracts but on the other hand the compensation paid is expressly said to be compensation for the boat and is expressly received as compensation for the boat. Further, the amount paid consisted only of a refund of progress payments with interest which, by no twisting of figures, can be considered as making allowance for an alleged requisition of the contract.

3. The O. B. Jennings Settlement.

On August 3, 1917 the Newport News Shipbuilding and Dry Dock Company had under construction its hull No. 201, the "*O. B. Jennings*" for the Standard Oil Company of New Jersey. On that date "The United States, acting through the Fleet Corporation, duly requisitioned said ship under construction and the materials therefor."[3]

(3a) NOT BASED ON REIMBURSEMENT BUT ON RECONVEYANCE TO FORMER OWNER.

The settlement subsequently entered into between the parties concerned is a reconveyance settlement typical of reconveyance settlements entered into with American former owners. Its provisions may be seen at a glance by reading General Counsel Cuthell's memorandum for Admiral Capps concerning this settlement as printed on pages 174 and 175 of the Appendix to the Counter-case of the United States.[4] In general this settlement completely releases the Fleet Corporation for the requisition of the vessel, reconveys title to the vessel to the former owner on consideration of the repayment by it of all the expenses incurred by the Fleet Corporation on account of the vessel, and requisitions from the erstwhile former owner the use of the vessel for the Shipping Board under the form requisition charter. There is no provision for the repayment of any sums of money to the

[1] Paragraph 4, Settlement Contract of June 11, 1918 between the Emergency Fleet Corporation and W. R. Grace & Co., U. S. Counter-case, Appendix, page 186.

[2] Paragraph 9, Settlement contract of June 11, 1918 between the Emergency Fleet Corporation and W. R. Grace & Co., U. S. Counter-case, Appendix, page 187. Italics Ours.

[3] Paragraph 3, the O. B. Jennings Settlement Contract of October 30, 1917, U. S. Counter-case, Appendix, page 170.

[4] O. B. Jennings Settlement Contract of Oct. 30, 1917—U. S. Counter-case, Appendix, pages 170 to 174.

owner prior to the requisition as compensation for the requisition of August 3, 1917.

(3b) CONTRACT NOT REQUISITIONED.

Nor will this settlement, then, lend any support to the still unsubstantiated assertion that "the authorities charged by law to pay just compensation for the requisitioned property have uniformly paid for contract values."[1]

4. The Silverado Settlement.

The Silverado settlement likewise demonstrates the unfounded character of the statement that "the earlier settlements by the Shipping Board of claims growing out of the requisition and down to the latter half of the year 1919, were made in accordance with the principle of reimbursement."[2]

On August 3, 1917, by the issuance of the regular requisition order, the Fleet Corporation requisitioned the "*Silverado*" then building at the yards of the Craig Shipbuilding Company for the Pacific Transport Company.[3] Prior to the requisition the Pacific Transport Company had paid to the shipbuilder $160,000 as part payment of the contract price of the ship.[4]

(4a) NOT BASED ON REIMBURSEMENT BUT ON REFUND OF PROGRESS PAYMENTS WITHOUT INTEREST.

By the settlement entered into between the Fleet Corporation and the Pacific Transport Company on July 1, 1918 (prior "to the latter half of the year 1919") the Fleet Corporation fixed "as the just compensation to be paid for the said ship"[5] the sum of $160,000, the identical amount paid to the shipbuilder by the Pacific Transport Company. No expression is contained in the contract providing for the payment of interest to the claimant, who declares that "the amount so determined by the Fleet Corporation as above set forth is satisfactory"[6] and who accepts "the same as full and just compensation for said ship."[7]

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[1] Norwegian Counter-case, page 77.

[2] Norwegian Case, page 68.

[3] Paragraphs 2 and 4, Silverado Settlement Contract, U. S. Counter-case, Appendix, page 192.

[4] Paragraph 3, Silverado Settlement Contract, U. S. Counter-case, Appendix, page 192.

[5] Paragraph 5, Silverado Settlement Contract, U. S. Counter-case, Appendix, page 192.

[6] Paragraph 6, Silverado Settlement Contract, U. S. Counter-case, Appendix, page 192.

[7] Paragraph numbered 5, Silverado Settlement Contract, U. S. Counter-case, Appendix, page 192 at 194.

(4b) CONTRACTS NOT REQUISITIONED.

Here is no reimbursement, nor any substantiation for the assertion that "the authorities charged by law to pay just compensation for the requisitioned property have uniformly paid for contract values."[1] The Pacific Transport Company was given the exact amount it had paid to the shipbuilder, and no more, not even interest.

d. ALLEGED ADMISSIONS BY THE DEPARTMENT OF JUSTICE OF THE UNITED STATES THAT CONTRACTS WERE REQUISITIONED.

Mention has already been made of the statements by Norway that "* * the department of Justice of the United States * * have by express admission * * conceded that this [the requisition of contracts] was the legal effect of the requisition,"[1] and that "another instance has come to our attention where the United States Department of Justice has again acted upon this view."[1]

1. The Pusey and Jones Cases.

Presumably reference is made in the first quotation to the answer filed by the Department of Justice in the equity suit of the Pusey and Jones Company against the Emergency Fleet Corporation in the Supreme Court of the District of Columbia. As stated in the Counter-case of the United States[2] these answers, which were hurriedly prepared by counsel unfamiliar with the policies and practice of the Shipping Board and Fleet Corporation and with the complicated transactions involved in the suits, erroneously stated that contracts had been requisitioned. This error has now been corrected by the amendment of these answers.[3]

2. The Consorzio Veneziano Case.

The second reference[1] is to the case of Consorzio Veneziano di Armamento e Navigazione vs. United States of America, No. 34746 in the United States Court of Claims.

The material printed in the Appendix to the Counter-case of Norway is entirely insufficient to prove the point.[4] Reliance is appar-

[1] Norwegian Counter-case, page 77.
[2] U. S. Counter-case, page 43.
[3] The Pusey & Jones Cases, U. S. Counter-case, Appendix, pages 359–379.
[4] Norwegian Counter-case, Appendix, pages 215–218.

ently had on the fact that in both stipulations printed it is stated that the United States has no objection to the plaintiff's proposed findings of fact. The findings of fact do not seem to have been printed, and the material printed does not contain the admission as alleged. Unfortunately, too, Norway has not called attention to the entire record. There appears on the Court record of this case "defendant's proposed finding of fact in lieu of plaintiff's proposed finding No. XII filed pursuant to order of the Court." In connection with this proposed finding of fact submitted by the Department of Justice, it is stated in part—

"In view of the stipulation entered into in this case, counsel for the Government has not thought it necessary to submit a brief in answer to the plaintiff's brief.

"However, in order that the position of the Attorney General may not be misunderstood with respect to Point II of the plaintiff's brief, it may be added that the Government does not admit that the United States, the United States Shipping Board or the United States Shipping Board Emergency Fleet Corporation, requisitioned the contracts for the construction of the hulls Nos. 10 and 11 which give rise to this suit. This position is in accordance with the uniform construction placed upon the requisition order of August 3, 1917, by the officials of the United States Shipping Board and the United States Shipping Board Emergency Fleet Corporation."[1]

Of the two express admissions alleged to have been made by the United States Department of Justice, one is seen to have been corrected, and the other is seen, on an examination of the whole record, to contain no admission, but a denial, that contracts were requisitioned.[1]

e. CONCLUSIONS.

To sum up, the following are the contentions of the Kingdom of Norway with reference to other settlements made by the Ship-

[1] In the Court of Claims of the United States. Consorzio Veneziano di Armamento e Navigazione vs. United States, No. 34746. Statement in connection with Defendant's proposed finding of fact in lieu of Plaintiff's proposed finding No. XII, filed pursuant to order of the court, May 6, 1922.

This excerpt from the record in the Consorzio case is introduced at this time not only in accordance with the general principle of law and equity which entitles the United States to produce to the Tribunal the whole of any record of which Norway has produced only a part, but also in accordance with the express reservation contained in the Counter-case of the United States, page 2, where it is stated:

"* * but the United States desires expressly to reserve the right to use in the written and oral Arguments any portion of any document or of the record of any committee hearings or judicial proceedings from which quotation has been made in the Norwegian Case or Counter-case, without publishing the entire document or record in the Counter-case of the United States."

The United States does not, of course, claim for itself or admit on the part of Norway any right to introduce further evidence at this time.

ping Board and the Fleet Corporation with former owners of ships and materials requisitioned by the order of August 3, 1917.

"The earlier settlements by the Shipping Board of claims growing out of the requisition and down to the latter half of the year 1919, were made in accordance with the principle of reimbursement."[1]

"During the Hurley Administration, when it came to actually making settlements the principle of reimbursement had been following."[2]

"It is probable that if we had access to the records of the Shipping Board other settlements during the Hurley Administration would be found where reimbursement was the measure applied."[3]

"* * the Shipping Board have * * by settlements which they have made, conceded that this [the requisition of contracts] was the legal effect of the requisition."[4]

"The authorities charged by law to pay just compensation for the requisitioned property have uniformly paid for contract values."[4]

"Other foreign owners of contracts have been compensated for contract values."[4]

"* * these claimants are entitled to the same measure of compensation accorded to others similarly placed."[4]

We have already contended and here reassert that these compromise settlements do not legally or logically constitute precedents for the fixing of values or damages in a judgment rendered *in invitum*, but this aside the United States takes issue with the two major positions assumed by the Norwegian government, namely that prior to the latter part of 1919 the settlements made by the Shipping Board were reached in accordance with the principle of reimbursement, and that the Shipping Board has admitted by its settlements that contracts were requisitioned, and in support of its position points to the settlements which have just been discussed.

It is submitted that the Cunard Adjustment is not binding upon the United States as a measure of its obligations to the present claimants for the reason that the Cunard Adjustment was substantially a settlement between not merely two sovereign nations, which alone would be sufficient totally to segregate it from the class in which the present claimants fall, but between two allies fighting defensively shoulder to shoulder for their very existence. The United States contends that the Stray Settlement is quite distinguishable from the instant case and that reimbursement was not

[1] Norwegian Case, page 68.
[2] Norwegian Case, page 82.
[3] Norwegian Case, page 111.
[4] Norwegian Counter-case, page 77.

its basis. The United States contends that the John M. Connelly Settlement, the Mitsui Settlement, the Carl W. Hamilton Settlement, the Santa Tecla Settlement, the O. B. Jennings Settlement, and the Silverado Settlement, settlements which are believed to be fairly typical of all the settlements entered into, entirely discredit the position taken by the Norwegian government that reimbursement was the uniform basis of settlement under the Hurley Administration.

With reference to the assertion that the Shipping Board has admitted by settlements that contracts were requisitioned, the United States points not only to the Cunard, Stray, Mitsui and Connelly settlements mentioned in the Case and Counter-case of Norway, but also to the Carl W. Hamilton, the Santa Tecla, the O. B. Jennings and the Silverado settlements, in none of which did the United States by words or by payment for contracts admit that contracts were requisitioned.

With reference to the Norwegian government's contention that the present claimants should be accorded the same compensation as that given to others similarly placed and that the United States is obligated "to treat neutrals at least as favorably as its own nationals,"[1] the United States, while emphatically denying the soundness of this contention,[2] respectfully draws the attention of this honorable Tribunal to the Stray Settlement and to the sums which it has been shown that the present claimants would receive if awards were made in their favor on the principles contended for by Mr. Stray. Attention is likewise called to the Carl W. Hamilton settlement and to the other settlements with American former owners, where claimants received not reimbursement but merely a refund of progress payments, sometimes with and sometimes without interest. In calling these matters to the attention of the Tribunal, the United States by no means admits that these claimants are entitled to as favorable treatment as was accorded in any of the above settlements and it reiterates its contention that awards in the amounts indicated in the conclusions to the Counter-case of the United States amply meet the requirements not only of law and equity but of comity in these cases.

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[1] Norwegian Counter-case, page 52.

[2] See, on this point, *infra*, page 145 *et seq.*

C. WHEN WAS THE REQUISITION EFFECTIVE?

I. Various Norwegian Contentions.

The United States has consistently maintained from the very beginning that the Christiania Group hulls were requisitioned for title on August 3, 1917.[1]

The claimants and the Norwegian Government have taken a variety of alternative and contradictory positions.

a. CAPTAIN HANSSEN'S POSITION IN 1919.

Captain C. Frölich Hanssen, the Norwegian Agent, in his brief filed with the Shipping Board on behalf of the Christiania Group, November 5, 1919, took the following alternative positions: (1) The order of August 3 did not apply to the Norwegian ships at all. (2) If it did apply, it requisitioned use only and not title. (3) The Board decided to requisition title some time in October.[2]

b. THE POSITION OF THE NORWEGIAN CASE.

The Norwegian Case in the present arbitration is by no means so clear on this point as Captain Hanssen's original brief. In fact it reveals a state of indecision as to the effect of the order of August

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[1] See "Requisition Letter and Telegram of August 3, 1917," to the various shipbuilders, as listed in the Case of the United States, page 50, note 3, and page 51, note 3, the Fleet Corporation's circular letter of August 22, 1917, to the district officers, as listed in the Case of the United States, page 58, note 1.

See also, U. S. Case, pages 57–58; Mr. Hurley to Senator Nelson, October 17, 1918, U. S. Case, Appendix, pages 150–156.

The Case of the United States, conclusion 5 (b), page 81, states the position of the United States as follows: "The effective date of requisition for title of the hulls of the Christiania Group was August 3, 1917."

The Counter-case of the United States, page 13, says: "The position of the United States is, as set forth in the Case of the United States, that the Norwegian tonnage under construction in the United States was requisitioned for title on August 3, 1917."

[2] Captain Hanssen's exact language is as follows: "As has been said, the order of August 3 should not be considered to include the Norwegian ships in any sense; but if it were to be held to include them, then the *use* only would seem to have been taken *at that time*. If merely the *use* of the ships and not the *ownership*, were taken on August 3, 1917, then the *ownership* was not taken until the Government, through its appointed agents, decided definitely to requisition full title. It was not until some time in October (according to the Norwegian Minister's understanding) that the trustees of the Fleet Corporation decided to requisition title to the Norwegian ships. The board can easily verify the truth of this understanding since their own records will disclose what, if anything, was done in October." Captain Hanssen's Brief, November 5, 1919. U. S. Counter-case, Appendix, page 246 at 260–261. Italics ours.

3, quite as great as that which it imputes to the Shipping Board. It does say, however, "the final determination to requisition the title to the Norwegian ships including the ships to be built for the claimants was not made until October 4, 1917."[1]

In the light of the mass of evidence presented in the Case of the United States, showing that the requisition program of August 3d was applied to the Norwegian hulls in exactly the same way that it was applied to all other hulls, it has been decided in the Norwegian Counter-case to abandon the entrenchments thrown up by Captain Hanssen in 1919 and to make a forced march in the face of the enemy to an entirely new position, based on estoppel, leaving behind, however, a rear guard of skirmishers in an endeavor to keep open as long as possible a line of communications between the old and the new positions.

c. THE POSITION OF THE NORWEGIAN COUNTER-CASE.

In pursuance of this plan, Norway has now taken up two new positions,—one which bears a certain family resemblance to Captain Hanssen's position in 1919,—which Norway believes to be sound but which is only to be lightly held by the rear guard, and one in which Norway proposes to "dig in" for the purposes of this arbitration.

First, Norway's "own interpretation[2] of the events of the requisition is as follows: (a) "that by the very terms of the special agreement of July 24th no general orders taking title could apply to Norwegian property,"[1] i. e., the order of August 3 did not, if correctly construed, apply at all to the Norwegian hulls; (b) "that during the summer of 1917 the Emergency Fleet Corporation exercised only such administrative control over the building of the Norwegian ships as was necessary to conform them to the general requirements of the shipbuilding program,"[3] that is, Norway is apparently ready to abandon the idea that a ship under construction can be requisitioned for "use",[4] and in order to avoid the unescapable alternative that the ships were requisitioned for title has invented a *tertium quid*, called "administrative control;" (c) that the

[1] Norwegian Case, page 3. See also U. S. Counter-case, page 12, note 6, collating various passages from the Norwegian Case in regard to the effective date of the requisition.
[2] Norwegian Counter-case, page 74.
[3] Norwegian Counter-case, pages 74–75.
[4] See *supra*, page 17.

Board "became convinced that it had already done in August what it wanted to do in September,"[1] and on October 6th decided to say *ex post facto* that it had requisitioned for title on August 3d,—an explanation which imputes to the Board in about equal degree both imbecility and mendacity.

This exegesis, to quote the measured language of the Norwegian Counter-case in another connection, seems to be "hardly adequate," and it is therefore not surprising that although convinced of its correctness Norway does not expect to attempt to maintain it before this honorable Tribunal. Norway's position before this Tribunal, unless again changed on the Argument, after a perusal of the opinions of the Norwegian courts, set forth in the Counter-case of the United States and presently to be referred to, is that if the United States says that the order of August 3d was intended to requisition the Norwegian ships under construction for title, "the Kingdom of Norway must, of course, accept such an interpretation of the order."[2]

It may be remarked in passing that it is hoped that this is indicative of an intention to accept the construction placed by the United States upon all other statutes and regulations of the United States.

But be that as it may, Norway accepts the American interpretation of this order and then takes the ground that [1] "It would be unjust to permit the United States to take advantage of its own, to say the least, negligence and thereby inflict loss upon those who had innocently relied upon what appeared to be a promise faithfully observed." Again, the conduct of the United States "constituted a series of acts so misleading as to amount to the most negligent misrepresentation of the true situation,"[1] and this conduct prevents the United States "from now contending that as to the members of

[1] Norwegian Counter-case, page 75.

[2] "If the United States insists that the general order of August 3 was intended to apply to the Norwegian new buildings, even though such action on the part of the United States would be a direct and flagrant violation of the Bryn-Polk agreement, the Kingdom of Norway must, of course, accept such an interpretation of the order." Norwegian Counter-case, page 74.

See also, Norwegian Counter-case, page 53, where it is said that Norway "will not take issue with any statement of fact made by the United States as to the purpose intended to be effected by the requisition order of August 3, * *."

the Christiania Group the requisition was effective prior to the dates upon which they respectively purchased their contracts."[1]

In other words, it is the Norwegian contention, that by its misrepresentations grossly negligent, "to say the least," and mayhap deserving of some harsher epithet, the United States has estopped itself from asserting that the order of August 3d was effective as against these claimants "prior to the dates upon which they respectively purchased their contracts."[1] It is to this newest position of the Kingdom of Norway that the argument of the United States under this head will be addressed.

II. The Understanding of July 24th.

The first basis alleged for the estoppel is the understanding of July 24th.

a. THE TERMS OF THE UNDERSTANDING OF JULY 24TH.

Two honorable gentlemen meet in Mr. Polk's office at noon on July 24th. Mr. Polk has before him and doubtless passes over to Mr. Bryn the following resolution of the Shipping Board, dated July 23d:

"*Be it resolved*, That in this present emergency the Board proceed to requisition title to and possession of *all launched merchant vessels where construction is completed* and which construction was commenced in our yards under contracts which would lead to foreign documentation, other than those vessels which it is shown by competent evidence have already been given by a foreign Government either permanent or provisional registry by such Government.

"*Provided*, That no *completed vessel* shall be requisitioned without 24 hours' previous notice to the embassy of the nation owning the ship of our intention to requisition it."[2]

The two gentlemen then reach an oral understanding.

What was that understanding?

The best evidence of that understanding is Mr. Polk's letter of July 24th to the Shipping Board, dictated in the presence of Minister Bryn, evidently after a telephonic conversation with the Shipping Board. This letter reads as follows:

"I beg to acknowledge the receipt of your letter of July 23 inclosing resolutions of the Board, directing that the Board proceed to requisition *all merchant ships launched* where construction is commenced in our yards.

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[1] Norwegian Counter-case, page 74.

[2] U. S. Case, pages 32, 33; U. S. Case, Appendix, pages 132, 133. Italics ours.

"In your letter you request that we give 24 hours' notice, as required by the Resolution, to the British and Norwegian diplomatic representatives of your desire to take title and possession of certain vessels. Your letter was received July 24. I requested the Norwegian Minister to call and gave him notice at 12 o'clock that day. The 24 hours will expire July 25 at 12 o'clock noon.

"In accordance with my conversation with you on the telephone this morning, I told him that in view of the fact that the commission was due to arrive here this week, that if he, on behalf of the Norwegian Government, would agree not to permit the documentation of Norwegian ships after 12 o'clock, July 25, the Shipping Board would not *enforce* the requisitioning of Norwegian *ships* until the commission arrives and takes up this matter with your Board. As I said before, the commission is due this week.

"I will let you know the exact hour that the notice was delivered to the British Government."[1]

The next best evidence of what this agreement was is Minister Bryn's telegram to the Norwegian consuls in New York, Chicago, St. Paul, and San Francisco, which, while not dictated in Mr. Polk's presence so far as appears, was copied to him in a letter of the same date. In that telegram Mr. Bryn said:

"Shipping Board yesterday passed resolution to the effect that *all completed ships* were to be requisitioned with twentyfour hours notice to diplomatic representative. Period. Such notice was served on me today Tuesday twentyfourth at noon. Period. Thereafter I guaranteed to the Secretary of State that after twelve oclock noon tomorrow twentyfifth no Norwegian certificate of nationality should be issued for ships built for Norwegian account in this country. Period. On this condition the Secretary of State agreed that the requisitioning of Norwegian ships should be postponed until the Norwegian special mission had arrived and had had opportunity to take the matter up with the American Government. Period. Until noon tomorrow Wednesday you may therefore issue certificates of nationality provided all documents are in order but thereafter you will have to cease issuing certificates of nationality for *newbuilt ships*."[2]

All other evidence, even the letter of Mr. Brent transmitting the resolution of the Shipping Board to Mr. Polk, useful as it is, is of lesser value.

It is submitted that not merely as a "grammatical exercise"[3] nor by way of "an interpretation purely academic,"[4] but as a matter of

[1] Mr. Polk to Mr. Brent, July 24, 1917. U. S. Case, pages 33–34; U. S. Case, Appendix, page 133. Italics ours.

[2] U. S. Case, page 34; U. S. Case, Appendix, page 134. Italics ours.

[3] Norwegian Counter-case, page 62.

[4] Norwegian Counter-case, page 64.

the plain meaning of the English language, the agreement on Mr. Polk's part, recorded in these documents, is simply an agreement not to "enforce" pending the arrival of the Commission the requisition which had already been announced and with which the gentlemen who made the agreement were dealing, namely, to quote the resolution, the requisition of "all launched merchant vessels where construction is completed," or, in Mr. Polk's language, "all merchant ships launched," or, as Mr. Bryn said, "all completed ships."

The twenty-five pages which the Norwegian Counter-case devotes to this subject are spent in an endeavor to make it appear that these gentlemen were making an agreement not merely about the requisition of these completed vessels which had been announced, but mainly about the requisition of vessels under construction which it is true was anticipated at the time but which had not been announced and as to which there is not one word or one suggestion in this primary evidence.

b. THE CIRCUMSTANCES SURROUNDING THE UNDERSTANDING.

Next let us consider the terms of the understanding in the light of "the actual situation which called it forth," upon which stress is laid in the Norwegian Counter-case.[1] What was the actual situation when Mr. Bryn called at Mr. Polk's office at the latter's request? It was this:

(1) Ever since early in February, when the Secretary of State handed the German Ambassador his passports and the President issued his proclamation declaring a national emergency under section 9 of the Shipping Act, thereby prohibiting the transfer of vessels from American registry to a foreign flag without the approval of the Shipping Board, the problem of the disposition of ships building for foreign account in American shipyards had been a serious one, and a requisition in some form had been in the air.

(2) The Congress of the United States had on June 15th passed an act authorizing the President to requisition all shipping, both completed and on the ways.

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[1] Norwegian Counter-case, page 62.

(3) The President of the United States had on July 11th[1] delegated to the *Shipping Board* the authority to requisition *completed* vessels, and to the *Emergency Fleet Corporation* the power to requisition *ships under construction.*

(4) There were at that time "some forty odd"[2] Norwegian ships under construction and at least one *completed* Norwegian ship which had not yet received Norwegian documentation.

(5) This exact situation was not known accurately then, as we know it now, but it was known that

"* * * shipyards throughout the country were from time to time completing and delivering vessels. Some of these were delivered to foreign owners, who immediately registered them under a foreign flag and took them out of the Jurisdiction of the United States."[3]

It was thought by the Shipping Board that there were several completed vessels about to go to Norwegian and British Registry.[4] This opinion was apparently also shared by the Norwegian Minister.

(6) Requisition of all tonnage, completed and uncompleted, was therefore now imminent, and the Norwegian Minister had twice requested that the requisition of Norwegian tonnage be postponed until the arrival of the Nansen Mission,[6]

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[1] Executive Order of the President of the United States, July 11, 1917, delegating certain powers to the Shipping Board and Emergency Fleet Corporation. U. S. Case, Appendix, page 91.

In *Sloan Shipyards Corporation et al.* vs. *United States Shipping Board Emergency Fleet Corporation,* Supreme Court of the United States, No. 308, October term, 1921, decided May 1, 1922, Mr. Justice HOLMES, who read the opinion of the court, said:

"On July 11, 1917, the President delegated to it (the Emergency Fleet Corporation) the powers that had been conferred upon him by the Act of June 15, 1917, c. 29; 40 Stat. 182, applicable to the construction, purchase and requisitioning of vessels in process of construction and of materials for ship construction, and delegated to the Shipping Board his powers to take by purchase or requisition constructed vessels and the operation of all vessels acquired by the United States, with authority to exercise these powers either directly or through the Fleet Corporation."

[2] Norwegian Counter-case, page 60. Of the "forty odd contracts for the construction of ships by American shipyards for Norwegian owners," referred to in the Norwegian Counter-case, only six had to do with vessels of the Christiania Group, since the four Wilmington hulls and the five New Jersey hulls were "owned" by Hannevig's dummy corporations, Bulk Oil Transports, Inc., and Manss Steamship Corporation.

[3] Norwegian Counter-case, page 58.

[4] Mr. Brent to Mr. Polk, July 23, 1917. U. S. Case, Appendix, page 132.

[5] See his telegram to the Norwegian consuls at New York, Chicago, St. Paul, and San Francisco, which were obviously sent because he thought that there might be vessels under the jurisdiction of these consuls to which the agreement applied. U. S. Case, Appendix, page 134.

[6] The Norwegian Counter-case appears to reckon the number of the Minister's requests at three, and it lays great stress upon the use of the word title in his note of July 23, the suggestion apparently being that the Minister was at that time drawing the distinction between requisition for "title" and requisition for "use."

So strongly has this thought appealed to the authors of the Norwegian Counter-case that this single expression has been multiplied by three, and we find the Norwegian Counter-case referring with italics to "three earnest appeals to the American Govern-

(7) On July 23d the Shipping Board passed a resolution "to requisition title to and possession of all launched merchant vessels where construction is *completed* * * *; provided, that no completed vessel shall be requisitioned without twenty-four hours' previous notice * * *."[1]

(8) On the same day, Mr. Brent, Vice Chairman of the Shipping Board, writes Mr. Polk, enclosing a copy of the resolution of July 23d "concerning merchant vessels now completed" and adding:

"The vessels under this designation are vessels which will undoubtedly go to British or Norwegian registry. Therefore it is the urgent request of the Shipping Board that this Resolution, which calls for 24 hours' notice, be served this afternoon, if possible, upon the British and Norwegian Embassies, as it is our desire to take title and possession to-morrow to several vessels which will go to these nationals, and we want to have the notice given so as to permit this action to be taken.

"Please advise us the hour of delivery to the several embassies so that we may comply thoroughly with the terms of our own Resolution."[2]

What is there in all this to change the plain meaning of an agreement not to "*enforce*" the requisition of completed ships already

ment to take no steps toward requisitioning the *title* to these new buildings until a special mission due to arrive shortly had reached the United States." Norwegian Counter-case, page 58. Italics those of the Norwegian Counter-case.

Again, "his [the Minister's] final proposal in the matter, which he had made three times, the last time only the day before, had not as yet been accepted by the American authorities. This proposal was to postpone the requisition of title to the Norwegian new buildings" etc. Norwegian Counter-case, page 60.

It is submitted purely as a minor contribution to historical accuracy that the Minister uses the word "title" only once, that is, in his note of July 23d, and that he makes only two, and not three, "earnest appeals."

But the substantial point is that there is nothing whatever to indicate that the use of the word "title" was anything except accidental. It is not intended to deny that the Norwegian Minister had reference to requisition for title both in his memorandum of July 23d, where he uses the word "title," and in his Aide-Mémoire of June 28th, where he does not use it. Of course he meant requisition for title in both cases, just as the Fleet Corporation was thinking of requisitioning for title in issuing the requisition order of August 3, although the word "title" was not mentioned, because no one, we say with submission, ever thought of requisitioning a ship under construction except for title until that idea was advanced as a Norwegian contention. What we do wish to deny is the justification for the italicized emphasis of the word "title" in the Norwegian Minister's memorandum of July 23d particularly when it is multiplied three times.

In this connection attention is also called to the fact that apparently this fortuitous use of the word "title" in one communication has even sufficed to convince the authors of the Norwegian Counter-case that everything else except "title" was a matter of supreme indifference, both to the Minister and to the Nansen Mission. Witness the following passages:

"On his part, the Norwegian Minister was most anxious to make some arrangement whereby Norwegian citizens might retain the ownership of these vessels, though he was not concerned as to who had possession and control of them while they were building." Norwegian Counter-case, page 65.

Again: "* * requisition for title—which was all that concerned the Mission—was barred until the negotiations had taken place." Norwegian Counter-case, page 71.

It is respectfully submitted that an intellectual structure which requires the assistance of such a fragile butress must be in an unsound condition.

[1] U. S. Case, Appendix, page 132. Italics ours.

[2] Mr. Brent to Mr. Polk, July 23, 1917. U. S. Case, Appendix, page 132.

decided on by one instrumentality, namely, the *Shipping Board*, and turn it into a promise on behalf of another instrumentality, namely, the *Fleet Corporation*, not to requisition *ships under construction?*

Nothing, it is submitted, so long as it be granted that two gentlemen having before them two separate and distinct matters referable to different authorities can make an agreement with respect to one without at the same time including the other.

c. NORWEGIAN OBJECTIONS TO THE AMERICAN INTERPRETATION.

As against the interpretation maintained by the United States, the Norwegian Counter-case makes the following contentions:

(1) That under the American contention, "the United States made an agreement to refrain from taking something which did not and would not exist, with a reservation, acquiesced in by Mr. Bryn, of liberty to take everything which did exist—an inexplicable agreement for Mr. Bryn to have made, for under it the whole shipping question about which the Special Mission was coming to the United States might be settled before it arrived." [1]

This paragraph embraces two objections to the American view: (a) that as interpreted by the United States there was nothing upon which the Bryn-Polk agreement could operate, that is, there were no Norwegian completed ships; (b) that as interpreted by the United States, Mr. Bryn thereby conceded the right of the United States to requisition everything which did exist, that is, ships under construction.

(1a) As to the first contention that there was nothing upon which the agreement could operate, there is both a technical and a substantial answer.

(1aa) The technical answer is the situation of the Norwegian steamer *Dicto*. The facts in regard to the *Dicto* are exceedingly simple, although they are complicated by a great variety of statements, restatements, and misstatements in the Norwegian Counter-case.[2]

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[1] Norwegian Counter-case, page 62.

[2] See the following references to the *Dicto* in the Norwegian Counter-case:

"Now there was on July 23 only one Norwegian vessel which could, by any stretch of the meaning of the word, be called, completed. This was the "Dicto," which had been delivered to her Norwegian owner in San Francisco and was preparing to sail as soon

The facts are all in the record, and are as follows:

The Norwegian steamer *Dicto* was completed and was in the hands of her owner in San Francisco awaiting Norwegian documentation on July 23d.

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as her registry under the Norwegian flag should be completed." Norwegian Counter-case, page 59.

This statement shows that it required no stretch of the meaning of any word to call the *Dicto* completed and that she was subject to requisition under the Shipping Board's resolution of July 23d upon the expiration of the twenty-four hour notice, but for the understanding of July 24th.

"There was, therefore, on July 23 only one completed Norwegian vessel which, if she had not obtained provisional registration under the Norwegian flag, might have fallen within the terms of the Shipping Board's resolution." Norwegian Counter-case, page 59.

This is correct if after the word "flag" the words "before noon, July 25th," be inserted, and if the word "might" is changed to "would", and if the words "but for the Bryn-Polk agreement" are added. The statement would then read: "There was, therefore, on July 23 only one completed Norwegian vessel which, if she had not obtained provisional registration under the Norwegian flag *before noon, July 25th, would* have fallen within the terms of the Shipping Board's resolution, *but for the Bryn-Polk agreement.*"

"There was one completed vessel which had been built by an American shipyard for a Norwegian owner whose papers of registration under the Norwegian flag were not yet complete." Norwegian Counter-case, page 60.

This is correct as far as it goes.

"In regard to the one completed vessel, the Norwegian Minister had been informed on June 4 in answer to his earlier inquiries that such a vessel did not come within the restrictions of the Shipping Act, 'and that no application to the Shipping Board is necessary before foreign certificates of nationality be issued.'" Norwegian Counter-case, page 60.

While there is nothing in the record to show that the Norwegian Minister's inquiry of May 25th, (U. S. Case, Appendix, page 127,) was made with reference to the *Dicto*, it is possible that it was so made. It may also well be that the *Dicto* comes within the principle laid down in Mr. Polk's answer of June 4th "that ships under construction for foreign account under a contract whereby the title to the vessel passes to the purchaser as payment is made," (U. S. Case. Appendix, page 129 at 130,) but after this is said what possible relevancy does it have to the matters now under consideration. The Board's resolution would have applied to the *Dicto* none the less. The statement in the Norwegian Counter-case that the Shipping Act did not require an application to the Shipping Board before the *Dicto* was given Norwegian papers, if correct, has no more tendency to show that the *Dicto* was exempted from requisition under the Board's resolution of July 23d than would a statement that her owner was not liable for taxation for her value under the general property tax in California. It is difficult to understand the purpose of this statement.

"We have already pointed out that there were no completed ships whatever in existence except the 'Dicto,' which was about to receive the Norwegian flag, and that the only ships to which the agreement could have referred were the newbuildings in process of construction." Norwegian Counter-case, page 62.

Here is another confused statement. It is true that the *Dicto* was a boat about to receive the Norwegian flag. It is also true that she was subject to the requisition under the resolution of July 23d, after the expiration of the 24 hour notice, but for the Bryn-Polk agreement; and it is therefore not accurate to say that "the only ships to which the agreement could have referred were the newbuildings in process of construction."

"For, as we have seen, there were no completed ships (except the 'Dicto'), and were to be none before the Mission arrived." Norwegian Counter-case, page 62.

"This requisition did not affect any Norwegian vessels, although there was one vessel which might have come within its scope if its papers of registry had not been completed in time." Norwegian Counter-case, page 64.

"Only one vessel, the 'Dicto,' was registered under the Norwegian flag before noon on July 25." Norwegian Counter-case, page 66.

These last three statements are literally true, although like all the other statements in regard to the *Dicto* in the Norwegian Counter-case they fail to take into account the fact that the negotiators at noon of July 24th could not know whether or not the *Dicto* would be subject to the requisition order but for their agreement.

"This was the 'Dicto', which had been delivered to her Norwegian owner in San Francisco and was preparing to sail as soon as her registry under the Norwegian flag should be completed."[1]

She was documented on the morning of July 25th.

"* * the steamer *Dicto* for which certificate of nationality was issued by the Norwegian consul in San Francisco on the morning of the 25th of July."[2]

It is therefore plain that when Mr. Polk and Mr. Bryn met at noon on July 24th and agreed as respects Norwegian completed ships there was one Norwegian completed ship for them to agree about. True, the Shipping Board's resolution required twenty-four hours notice. The notice was given at noon on the 24th. The *Dicto* was documented before noon on the 25th, and therefore even if there has been no Bryn-Polk agreement the *Dicto* would not have been requisitioned, always assuming that her documentation had been completed on the morning of the 25th; but if her documentation had been delayed until the afternoon on the 25th, she would have been requisitioned but for the protection afforded by the Bryn-Polk agreement. Even assuming complete knowledge of every fact as it existed at noon on July 24th, obviously unless they had the gift of prophecy Mr. Polk and Mr. Bryn could not have foretold with certainty at noon on the 24th whether or not the *Dicto* would be documented on the morning of the 25th. That Mr. Bryn at any rate laid no claim to subsequent, much less prior, knowledge of the circumstances surrounding the documentation of the Dicto is apparent from his correspondence with Mr. C. Henry Smith, of San Francisco, which is produced in the Norwegian counter-case. The Norwegian counter-case tells us that Mr. Smith, on July 27th, wrote Mr. Bryn saying

"I am advised that the S. S. 'Dicto,' which was delivered by the Union Iron Works Co., a few days ago, has obtained here Norwegian transfer, and I should like to know if you could give me the information on what terms,"[3]

to which Mr. W. M. Johannessen, Secretary of the Norwegian Legation, lost no time in responding "for the Minister" on July 31.

"In reply to your letter of the 27th instant, I beg to say that the Legation is without information about the subject."[4]

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[1] Norwegian Counter-case, page 59.
[2] Mr. Bryn to Mr. Polk, August 10, 1917. U. S. Case, Appendix, page 138.
[3] Mr. Smith to Mr. Bryn, July 27, 1917. Norwegian Counter-case, Appendix, page 229.
[4] Mr. Johannessen to Mr. Smith, July 31, 1917. Norwegian Counter-case, Appendix, page 229.

(1ab) But the substantial answer to the Norwegian objection that there were no completed ships upon which the Bryn-Polk agreement could operate, and an answer as obvious as it is substantial, is that neither Mr. Polk nor Mr. Bryn, nor the Shipping Board, had on July 24th, 1917, the detailed information as to the exact state of completion of the Norwegian hulls, which is now at the command of the representatives of Norway. It is the situation as it then appeared to the Board, to Mr. Polk, and to the Norwegian Minister, which is important, not the situation as we now know it to have been.

In the first place, it goes without saying that the Board did not pass the resolution declaring its policy to requisition "launched merchant vessels where construction is completed," without believing that there was some subject-matter to which the resolution could attach. The general situation, undoubtedly in the mind of the Board, is well set forth in the Norwegian Counter-case, when it is said:

"In the meantime, shipyards throughout the country were from time to time completing and delivering vessels. Some of these were delivered to foreign owners, who immediately registered them under a foreign flag and took them out of the jurisdiction of the United States.

"This leakage of ships from under its control the Shipping Board desired to prevent, * * *"[1]

But this is not a matter of *a priori* inference. It is a matter of record. In his letter of July 23d, forwarding the Shipping Board resolution of that date to Mr. Polk, Mr. Brent, Vice-Chairman of the Board, said:

"Pursuant to conversation with members of the Shipping Board this afternoon, I inclose copy of a Resolution just passed concerning merchant vessels now completed.

"The vessels under this designation are vessels which will undoubtedly go to British or Norwegian registry. Therefore it is the urgent request of the Shipping Board that this Resolution, which calls for 24 hours' notice, be served this afternoon, if possible, upon the British and Norwegian Embassies, as it is our desire to take title and possession to-morrow to several vessels which will go to these nationals, and we want to have the notice given so as to permit this action to be taken.

"Please advise us the hour of delivery to the several embassies so that we may comply thoroughly with the terms of our own Resolution."[2]

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[1] Norwegian Counter-case, page 58.

[2] Mr. Brent to Mr. Polk, July 23, 1917. U. S. Case, Appendix, page 132. See supra page 120.

It is therefore perfectly clear that Mr. Brent believed that there were "several vessels" completed, that these vessels would "undoubtedly go to British or Norwegian registry," and that the Board expected by giving notice on the 23d to be able to take title to these vessels on the 24th. Mr. Brent's letter did not reach Mr. Polk until July 24th, and therefore it was not possible to give the prescribed notice until noon on the 24th, thereby just giving time for the "leakage" of the *Dicto* from under the control of the Board by obtaining Norwegian documentation on the morning of the 25th as already noted. This leakage however was not known to the parties to the agreement for several days.

So much for the situation as it appeared to the Board and to Mr. Polk, who received his information on shipping matters from the Board.

On Mr. Bryn's side, his telegram to the Norwegian consuls at New York, Chicago, St. Paul, and San Francisco, instructing them that

"until noon tomorrow Wednesday you may therefore issue certificates of nationality provided all documents are in order but thereafter you will have to cease issuing certificates of nationality for newbuilt ships,"[1]

clearly indicate that he was not aware that the *Dicto* was the only Norwegian completed vessel which had to be taken into consideration. So far as ships under construction were concerned, there was no need to telegraph at all even as to those which "at the end of periods of from one to six months * * might become completed vessels."[2]

Viewing the situation, therefore, as we must view it, not as we now know it to have been, but as it appeared to Mr. Polk and Mr. Bryn on July 24th, 1917, it is submitted that there is no force whatever in the Norwegian contention that, as construed by the United States, there was nothing upon which the Bryn-Polk agreement could operate.

(1b) The paragraph of the Norwegian Counter-case under consideration furthermore argues that the understanding of July 24th, as interpreted by the United States, not only relates to something which

[1] U. S. Case, Appendix, page 134.
[2] Norwegian Counter-case, page 60.

did not exist, but imposes "a reservation acquiesced in by Mr. Bryn, of liberty to take everything which did exist."[1]

(1ba) This contention is difficult to understand. The Board had declared a policy of requisitioning completed ships after twenty-four hours notice, and Mr. Bryn secured an agreement to suspend the execution of this policy pending consultation with the Nansen Mission. This did not touch in any way the question of the requisitioning of ships under construction. No reservation is made about ships under construction, and of course Mr. Bryn did not acquiesce in any reservation. The matter was not dealt with at all. True it was pending, like other matters, between the Legation and the Department of State, but so far as the record shows it was not in any way considered or dealt with at the interview of July 24th, and there was no reason why it should have been then considered or dealt with, since the urgent matter upon which Mr. Bryn had been invited to confer with Mr. Polk, that is, the requisitioning of completed ships, was something entirely different, done by a body, the Shipping Board, which had no power to requisition ships under construction.

(2) The next objection raised by the Norwegian Counter-case to the American interpretation of the understanding of July 24th is that if it be supposed that Mr. Bryn and Mr. Polk thought the negotiations might be so prolonged as to permit the completion of other vessels, then,

"the promise was highly deceptive; for while apparently protecting a few Norwegian ships it nevertheless left the United States still free to do what the United States now contends was done,—that is, to requisition these and all other Norwegian ships while they were still in process of construction and thus avoid ever having to perform its promise."[2]

The short answer to this is that it is perfectly clear on the face of the record that no one had the slightest idea that the arrangement involved a delay of more than a few days. Mr. Polk's letter to the Shipping Board says:

"* * I told him that in view of the fact that the commission was due to arrive here this week, * * the Shipping Board would not enforce the requisitioning of Norwegian ships until the commission arrives and takes up this matter with your Board,"[3]

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[1] Norwegian Counter-case, page 62.
[2] Norwegian Counter-case, page 63.
[3] Mr. Polk to Mr. Brent, July 24, 1917. U. S. Case, Appendix, page 133.

and in the minutes of the Shipping Board of July 25th, it is stated, after reciting the receipt of Mr. Polk's letter of July 24th,

"It was ordered, inasmuch as the commission is due to arrive this week, that nothing be done in connection with the requisitioning of Norwegian ships."[1]

c. Finally, the Norwegian Counter-case insists that under the interpretation by the United States Mr. Bryn's promise was

"as empty as the rest of the agreement. What was the object of getting him to agree not to issue certificates of nationality to vessels built for Norwegian account if the United States were able and prepared to requisition these vessels before they were completed and capable of receiving Norwegian regstry?"[2]

This question once more betrays a complete failure to consider what was in the minds of the parties at the time of the transaction. Undoubtedly if the parties had known that it was already too late to prevent the registration of the only Norwegian ship which would be completed for several weeks, it would not have been worth while to make the Bryn-Polk agreement, or for that matter to pass the resolution of July 23d so far as the Norwegian ships were concerned, but they did not know it, not having spent several years in investigating the records of the shipyards of the country in which the Norwegian ships were under construction. They supposed that there were some Norwegian ships which were completed or nearly completed but were not documented, and which could not be documented within twenty-four hours, and they entered into an agreement to maintain the *status quo* as respects these vessels until the Nansen Mission arrived and had a hearing, and it is submitted that the arrangement which they made in the light of the facts as they then appeared was perfectly natural, normal, and fair, and was scrupulously observed on both sides.

1. On the other hand, we submit that as pointed out in the Counter-case of the United States Mr. Bryn's promise not to confer Norwegian registry when in the nature of things he could only document completed ships[3] certainly constituted a wholly inadequate con-

[1] Extract from the minutes of the United States Shipping Board for July 25, 1917. U. S. Case, Appendix, page 134 at 135.

[2] Norwegian Counter-case, page 63.

[3] It is believed that Norwegian Law makes no provision for documenting vessels under construction in foreign countries. Reference to the Norwegian Law of May 4, 1901, with the revisions of July 14, 1909, concerning the registration of vessels appears to show that by section 12 a vessel which is under construction in Norway can be registered, but section 9, which provides for provisional registry for vessels acquired abroad, has no such provision. See also section 1 of the Act, which states what ships can be registered.

sideration for an agreement to suspend the entire United States requisition program as respects ships under construction, which were wholly beyond Mr. Bryn's power to affect in any way through his authority to confer Norwegian documentation. As respects completed ships the parties were on a substantial equality and could bargain with reasonable equality of consideration. Both could deal with the subject matter of the agreement. Mr. Bryn could register and the Board could requisition. By the understanding of July 24th each side agreed to abstain from using its powers as respects completed ships after noon on July 25th pending a conference with the Nansen Mission, that is to say, the understanding of July 24th was a *status quo* agreement as of July 25th with respect to completed ships.

d. THE SUBSEQUENT CONDUCT OF THE PARTIES.

1. Norway next turns to the subsequent conduct of Messrs. Polk and Bryn in an endeavor to demonstrate that they understood the agreement of July 24th in the sense now contended for by Norway. The caption of the section of the Norwegian counter-case in regard to Mr. Bryn reads as follows:

"Mr. Bryn regarded the agreement as postponing the requisition of title to all Norwegian newbuildings."[1]

In support of this proposition the Norwegian Counter-case says:

"Mr. Bryn acted as though he understood that the United States was not to requisition any of the Norwegian newbuildings until the Mission had arrived.[1]

This second assertion is supported by the further statement that his communications to the State Department of June 28th and July 23d had not been answered on July 24th, nor had he received any other communication from the State Department prior to the arrival of the Nansen Mission.[2]

Just how the fact that the State Department did not write to Mr. Bryn shows how Mr. Bryn regarded the Bryn-Polk Agreement is not quite apparent. But we are next told that Mr. Bryn did not write to the State Department, and asked to draw the inference that

[1] Norwegian Counter-case, page 65.

[2] Presumptively this latter assertion is intended to be limited to communications on this topic.

he would have done so except that he regarded the understanding of July 24th as protecting ships under construction.

But it is submitted that the Minister had allowed nearly a month to elapse between his *aide memoire* of June 28th and his memorandum of July 23d, and that there is no inference of any kind to be drawn from his failure to write another note within a week. The Norwegian Counter-case claims that the understanding of July 24th was an answer to the Minister's communications of June 28th and July 23d. In response to this it is respectfully submitted that the understanding of July 24th was only a partial answer; that the complete answer came in the requisition order of August 3d.

In brief it is believed that the Norwegian Counter-case presents no affirmative evidence whatsoever to show how Mr. Bryn regarded the understanding of July 24th. But there is negative evidence of the highest order which it is submitted in all earnestness is absolutely conclusive against the Norwegian contention. It is that, in spite of the fact that according to the Norwegian contention the Department of State had broken in a perfectly inexcusable way an agreement with Mr. Bryn of the highest importance, Mr. Bryn did not utter a word of protest, did not write a line. The Norwegian Counter-case imputes significance to the fact that Mr. Bryn did not write a letter when there was no occasion to write one, and absolutely ignores the outstanding fact that he did not write a letter when in accordance with the Norwegian contention there was every reason to write one.

Of course, it might be said, although it is submitted there would be no merit whatever in the suggestion, that Mr. Bryn failed to protest on August 3d because he did not believe that the requisition order applied to Norwegian ships, but if this be the explanation of his silence why did he continue silent during all the Nansen negotiations, and finally why did he continue silent after October 6th, when at last he must have known, if the Norwegian contention be true, that the understanding had with him on July 24th in this most important matter had been ruthlessly disregarded? The undisputed record shows that Mr. Bryn made not the slightest protest until January 7, 1919, and that he protested at that time, not on his own motion, but as he is careful to state, at the request of Mr. Haight, the attorney for the Stray Group, who was then negotiating with the Shipping

Board and the Attorney General for a settlement of the Stray Group claims. At Mr. Haight's request, Mr. Bryn recited certain "events" which Mr. Haight had called to his attention. It is submitted that anyone can read between the lines of Mr. Bryn's letter that he did not take his protest seriously himself or expect anyone else to take it seriously.

2. Mr. Polk's conduct is treated in the Norwegian Counter-case under the following caption:

"Mr. Polk has shown that he understood the agreement the same way,"[1] that is, the same way that the Norwegian Counter-case would have us believe that Mr. Bryn understood it.

But when we come to examine the evidence submitted to establish Mr. Polk's understanding, we find, first, that according to the Norwegian Counter-case, Mr. Haight had a hearing on the Stray Group claims before the Attorney General, in January 1919, at which Mr. Polk was present. Mr. Haight was testifying in regard to this hearing before the Congressional Committee which was investigating the operations of the United States Shipping Board, and the Chairman asked him this question:

"Mr. Haight, in this discussion with Mr. Whipple at which Mr. Polk was present, and the Attorney-General, did you advance your contention with reference to the violation of the treaty?"[1]

And Mr. Haight solemnly replied, "I did, Sir."[1]

At this point in the Norwegian demonstration, one wonders just what is happening. Can it be that the learned representatives of Norway have confused the Treaty of 1827 with the Understanding of July 24, 1917? But no. The next line brings reassurance. "After this hearing Mr. Haight requested the Norwegian Minister to write Mr. Polk setting forth the facts of that agreement as he understood them."[1]

The logic of the situation now becomes apparent. The account of Mr. Haight's representations to the Attorney General, Mr. Whipple and Mr. Polk, in regard to the Treaty of 1827, which Norway has agreed not to invoke in this arbitration, is simply brought in by way of inducement, as it were.[2]

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[1] Norwegian Counter-case, page 67.

[2] See also Norwegian Counter-case, page 72, Footnote 5.

At any rate, after Mr. Haight had talked about the treaty, he went home and asked the Norwegian Minister to write the letter of January 7, 1919, about the Bryn-Polk Agreement, to which reference has already been made.

And now, at last, comes the argument as to Mr. Polk. Mr. Polk did not answer Mr. Bryn's belated letter of January 7, 1919, and although apparently it has not occurred to the representatives of Norway that any inference should be drawn from Mr. Bryn's failure to write this letter for nearly a year and a half, it does occur to them that Mr. Polk's failure to answer this very mild protest, confessedly sent at the request of the attorney for the Stray Group in aiding his negotiations with the Attorney General, and which was undoubtedly answered informally in these negotiations, is of great significance. We can not so regard it. It would seem to us on the contrary that Mr. Polk lived up to the high opinion which the representatives of Norway evidently have of his character[1] in suffering this letter to pass in silence.

e. MR. HOOVER AND THE WHEAT.

Finally, having exhausted other methods of argumentation, the Norwegian Counter-case turns to a supposititious illustration; it runs as follows:

"Would the United States have interpreted in such a way an agreement made by one of the war commissions with Americans instead of foreigners? Suppose that the Food Administration was contemplating a requisition of the entire wheat crop, and that while it was considering the question, the early wheat was being harvested and in many instances shipped to Canada. And suppose that a large organization of farmers was anxious to confer with the Food Administrator, Mr. Hoover, both about the price and in regard to agreeing upon some other arrangement short of requisition. In this situation, suppose that Mr. Hoover entered into an agreement with the Washington representative of the farmers by which Mr. Hoover agreed not to requisition any wheat belonging to members of this organization until he had conferred with a committee en route from Minnesota, and by which the farmers' representative agreed that they would not ship out of the country any wheat harvested during the conference.

"If such an agreement had been made, we doubt whether the United States would apply the same interpretation to it which it attempts to apply to the similar agreement in the present case. Would it say that the agreement applied only to harvested wheat, that under

[1] See Norwegian Counter-case, page 63.

the agreement Mr. Hoover was free to requisition all the standing crops without waiting for the committee to arrive? Particularly, would it urge this construction if at the time when the agreement was made there was not a single bushel of harvested wheat within Mr. Hoover's jurisdiction? It is hard to believe that such an interpretation would occur to anyone—and yet we submit that there can be no more doubt regarding the Bryn-Polk agreement than in regard to the one we have supposed."[1]

This is very interesting. The only difficulty is that it seems to omit to parallel certain important facts of the case in dispute. We venture therefore to rewrite it as follows, retaining the original language as far as compatible with accuracy.

Suppose that the United States Government in the summer of 1917 was contemplating a requisition of the entire wheat crop, and that while it was considering the question, the early wheat was being harvested and in many instances shipped to Canada. And suppose that a large organization of farmers was anxious to confer with the Government both about the price and in regard to agreeing upon some other arrangement short of requisitioning. Suppose further that the President of the United States had conferred on Mr. Hoover, the Food Administrator, power to requisition *growing* wheat, and on Mr. Houston, Secretary of Agriculture, the power to requisition *harvested* wheat. Suppose that *Mr. Houston* on July 23, 1917, had issued an order requisitioning the *harvested* wheat, and had sent a copy of his requisition order to the Secretary of the Interior and asked the Secretary of the Interior to give 24 hours' notice to the farmers of the country of this order. In this situation, suppose that the next day, July 24, the Secretary of the Interior sends for the Chairman of the Farmers' Alliance to give him this notice, and, at the request of the latter, agrees not to "enforce" the requisitioning of wheat belonging to members of the Alliance until he has conferred with a committee enroute from Minnesota, and the Chairman of the Alliance agrees that the farmers will not ship any wheat out of the country after twenty-four hours.

Would any reasonable man say that this agreement bound *Mr. Hoover* not to requisition the *growing* wheat until he had conferred with the committee, especially in view of the fact that both the Chairman of the Farmers' Alliance and the Secretary of the Interior supposed when they made the agreement that there were a number

[1] Norwegian Counter-case, pages 63–64.

of carloads of harvested wheat in the country and when there actually was a carload of harvested wheat which was covered by Secretary Houston's requisition order, but which was shipped to Canada during the twenty-four hours grace?

Now suppose that Mr. Hoover does requisition the growing wheat August 3d and at once takes over the entire harvesting of this wheat. Suppose that the Chairman of the Farmers' Alliance makes no protest whatever on the ground that the agreement of July 24th had been violated.

Suppose further that the Minnesota committee comes on and confers with Mr. Hoover and the latter after due consideration writes them on October 6 that he is obliged under the circumstances to *retain* title to the wheat which he commandeered on August 3d. Suppose that the Chairman of the Farmers' Alliance still makes no protest. Finally, imagine that nearly a year and a half later the counsel for the Farmers' Alliance, who is negotiating with Mr. Hoover and the Attorney General as to the just compensation to be fixed for the commandeered wheat finally bethinks himself that it might be of assistance if a protest were made against the commandeering order of August 3d on the ground that it violated the agreement of July 24th, and further that he succeeds in persuading the Chairman of the Farmers' Alliance to write to the Secretary of the Interior making a mild and semi-apologetic protest, putting the responsibility therefor all on his lawyer. Under these circumstances could the Secretary of the Interior be expected to take this "protest" very seriously? We think not.

It is submitted that the understanding of July 24th, referred to in the Norwegian Case and Counter-case as the "Bryn-Polk Agreement," is a perfectly simple, straight-forward matter, of relatively small importance, perfectly understood by the parties at the time, and perfectly easy to understand now, once it is considered in the light of the facts as they appeared to the parties at the time, and disencumbered from the subsequent interpretations and commentaries inspired by counsel learned in the law in an effort to make out a case for their clients.

III. The Negotiations with the Nansen Mission.

With respect to the negotiations between the Nansen Mission and the Shipping Board in the late summer and fall of 1917, little need be said here. This subject has been discussed in the Case[1] and Counter-case[2] of the United States, and it is respectfully submitted that the Norwegian Counter-case adduces little that is new by way of argument and as against the contemporaneous record set forth in the Case and Counter-case of the United States continues to rely upon some Norwegian communications *inter se*, which are at once "self-serving" and ambiguous.

One new telegram is printed, on page 248 of the Appendix to the Norwegian Counter-case. This is a telegram from Mr. Bryn to the Norwegian Minister of Foreign Affairs, which reads as follows:

"Please report to the Shipowners from Mr. Meling that he has seen Attorney Haight in New York and here and that he has got into communication with the Shipping Board. In a few days all shipbuilding will be taken over by the Government and they will use every possible means to rush the construction. The question of the ownership of the ships will be a subject for later discussion."[3]

Although this telegram lacks the importance of a communication with the American authorities, it is a contemporaneous official document, properly authenticated, and not communicated by way of a bulletin of the Norwegian Shipowners Association, and should be given the weight to which its substance entitles it; but it proves nothing at all, except that the Nansen Mission had been in "communication with the Shipping Board" before the requisition order was issued and had evidently been advised by the officials of the Shipping Board or the Fleet Corporation that the order was about to issue.

The statement at the end of the telegram—"the question of the ownership of the ships will be a subject for later discussion,"—means nothing. It is common ground that the question of ownership was discussed for two months, but what was that question? It was, in the view of the United States, "whether or not the Board would give back the title that it had already taken on August 3."[4]

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[1] U. S. Case, pages 38–44.
[2] U. S. Counter-case, pages 12–21.
[3] Norwegian Counter-case, Appendix, page 248.
[4] U. S. Case, page 44.

Says the Norwegian Counter-case:

"The learned Agent of the United States says on page 38 of his Case that 'these negotiations centered about the question as to whether some arrangement could be made whereby the title to the requisitioned vessels under construction for Norwegian account might be retransferred to their former owners or to American corporations organized by them.' It is submitted in all deference that this suggestion is not borne out by the contemporaneous record. Nothing could have astounded the Norwegian Special Mission more than such a suggestion. There is not a line in the record to bear it out until the letter written by the Chairman of the Board to Dr. Nansen on October 6."[1]

Two comments are respectfully made on this passage:

First, it admits that on October 6 the Nansen Mission was told exactly what the United States now says. If nothing "could have astounded the Norwegian Special Mission more than such a suggestion," why did it not say so? Why was there no protest, on the ground of the violation of the Bryn-Polk Agreement, by the Nansen Mission on October 6? It is respectfully submitted that this question cannot be answered in harmony with the ordinary laws of human nature and with the contentions of the Norwegian Counter-case.

Second, it is said that there is not a line in the record to bear out the contention of the United States until Chairman Hurley's letter to Dr. Nansen of October 6. The United States respectfully draws attention to the outstanding fact that the requisition program was going steadily forward and was being applied to the Norwegian vessels, and that every line in the voluminous record of the communications between the Shipping Board and the various Norwegian owners bears out the position of the United States. See correspondence of the Shipping Board and the Fleet Corporation, pertaining to the requisition of ships, set forth in the Appendix to the case of the United States, pages 197–533.

The Norwegian Counter-case says that the American authorities "seemed clearly of the opinion throughout this period, as the cases of the 'Janet Skinner' and the 'Wilhelm Jebsen' demonstrate, that the ownership of the new buildings was still Norwegian."[2] With this statement the United States respectfully joins issue and refers to the record in the cases of the "*Jeanette Skinner*" and the "*Wil-*

[1] Norwegian Counter-case, page 73.
[2] Norwegian Counter-case, page 72.

helm Jebsen," which is discussed in the Counter-case of the United States, pages 13 to 20, the original documents being printed in the Appendix to the Counter-case of the United States.

IV. The Norwegian Judicial Decisions.

The Norwegian Courts have not accepted the version of the happenings in the summer and fall of 1917 which is presented by Norway in this arbitration. They have repeatedly rendered decisions exactly to the contrary.

a. THE B. STOLT-NIELSEN CASE.

In the case of B. Stolt-Nielsen vs. Bjorn Bjornstad & Company, decided by the Christiana Court on June 2, 1921, plaintiff sued the defendant for recission and damages on account of a sale under date of September 20, 1917, of one of the Norwegian ship contracts with an American yard, the Moore & Scott Iron Works of San Francisco. The Court found for the defendant.

The grounds for the decision are clearly set forth in the following excerpts from the opinion:

"If we consider the circumstances prevailing in the present case, I cannot see but that the plaintiff, in purchasing the contract, assumed the risk connected therewith. For it is clear that Bjorn Bjornstad & Co. stated during the sale negotiations that the new ship had been requisitioned. * * * *

"The Navigation Journal had previously contained various reports of the requisition, for instance, on August 17th, 1917, it published a telegram from New York from shipowner Meling and Attorney Haight who was looking after Norwegian interests. After a conference with the authorities at Washington, they telegraphed that there really was no prospect of having the requisitioned newships transferred to the Norwegian Register. However, it was added: 'that the requisition does not necessarily mean that the ships have been lost to Norwegian owners forever.'

"As the plaintiff admitted this (Cf. his statement in this regard on page 7 of his argument), I can not see but that he must have been fully aware on September 20, 1917, that the requisition of August 3, 1917, was a requisition or seizure for possession (ownership) or would be upheld as such. The Norwegian representatives in America worked to have the requisition not be for possession, but according to the telegram in the Navigation Journal of August 17, 1917, the prospects for this do not seem to have been very bright. When the plaintiff bought the building contract, the Emergency Fleet Cor-

poration itself had paid the seventh instalment to the constructors (see deed of transfer, 3 ad 2, at end), which would seem to indicate that it had expropriated the new-ship and the contract as its own property; but even if it had not been settled as to whether the seizure was an expropriation for use or for possession, nevertheless, as said before, the parties must have been fully aware of the latter condition on Sept. 20, 1917. In spite of this, the plaintiff bought the contract. In so doing, he assumed the risks and chances. The chances consisted in the fact that the United States might possibly agree to allow the seizure to remain for use only, or to allow the owners of the contract to obtain the ships after the war. There was also the chance that the indemnity might be high. In this connection the defendant states in document 8, page 3–4: 'The hope was entertained at that time that an indemnity for the expropriation might be obtained from America to an amount as high as 1,100 crowns per ton for a contract with so favorable a delivery date as the new-ship contract in question. It was therefore a risky but not an unreasonable business.'

"In taking these various chances the plaintiff made a speculation and assumed the risk."[1]

It is interesting to note that the Christiania Court not only holds that the plaintiff "made a speculation and assumed the risk," but it points out a specific telegram from the Norwegian Mission, which as reproduced in the Norwegian newspapers ought to have put the plaintiff fully upon notice. The newspaper clipping to which it is understood the Court refers is reproduced in the Appendix to the Counter-case of the United States, and reads as follows:

"*Norges Handels-og sjöfartstidende, August 17th, 1917.*

"NEWBUILDINGS IN AMERICA.

"The ship-owner Mr. Meling and the advocate Mr. Haight cable that it has been proved by conferences with the authorities at Washington that there are no prospects to have transferred to the Norwegian register the Norwegian newbuildings which are already requisitioned together with all the other newbuildings. The requisition, however, does not signify that the ships are for ever lost to the Norwegian owners. Attempts are being made to obtain the sanction of the authorities to an arrangement according to which the ships should sail under American flag on time-charter basis during the war, six months after the termination of which they should be released for transfer to the Norwegian flag. No decision is expected before Aug. 25th."[2]

It does not find a place among the numerous newspaper clippings published in the Norwegian documents.

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[1] U. S. Counter-case, Appendix, page 380 at 386, et seq.
[2] U. S. Counter-case, Appendix, page 322.

b. THE CASE OF THE "BESTUM II."

1. The Bestum II in the Town Court.

The history of this case in the lower court, as shown by the extract from the opinion of the lower court appended to the decision of the Supreme Court, is as follows:

J. Ringen, Incorporated, sued the Bestum II Steamship Company. The declaration set forth the following facts:

On November 15, 1916, the Chester Shipbuilding Company contracted to build a cargo steamer of 9500 deadweight tons for C. K. Christoffersen, of Drammen, Norway, at a price of $134.00 per deadweight ton. By various mesne assignments, this contract came into the hands of the Bestum II Steamship Company, which in turn assigned the contract on October 4, 1917, to J. Ringen, Incorporated, of Haugesund, at the price of $265.00 per deadweight ton. J. Ringen, Incorporated, paid at the time of the transfer Kr. 4,736,225, an amount sufficient to cover the progress payments and premium.

The declaration proceeds to allege that "the American Government or its Shipping Board, long before the assignment to J. Ringen, Inc., took place, had requisitioned the new ships in question as well as the contract therefor, and this without its being possible to reckon on compensation or refundment from the government of more than the instalment which has already been paid in to the shipbuilding company together with interest thereon."

J. Ringen, Incorporated, accordingly claimed the right to rescind the contract and recover the purchase price together with damages.

The opinion of the lower court (the Christiania City Court) upon the issues raised by this declaration so far as material to the question of estoppel raised by the Norwegian Counter-case may be summarized as follows:

First, the Court recites the Shipping Fund Act of June 15, 1917, the Executive order of July 11, 1917, and the Requisition Order of August 3, 1917, and quotes the operative provisions of the latter.

The Court also refers to a letter from the Fleet Corporation of September 8, 1917, notifying C. K. Christoffersen of the requisition order.

The Defendant maintained that the order of August 3d included only "ships whose construction had then been begun, which it was

claimed was not the case with the new ship here under consideration." Upon this point the Court ruled that "there can be no doubt that the order really also referred to contracts for new ships which had not yet been begun."

The Court further held that the order of August 3, 1917, was controlling; that "it is not true, as intimated by the defendant, that any support can be found in the information at hand to warrant the assumption that the order of August 3, 1917, is merely a provisional measure, which was either followed or supposed to be followed by a subsequent final order."

As to the interpretation of the order, the Court adds:

"How the character of the order is to be determined may, moreover, appear somewhat obscure. The contract was not acquired in such a manner that the American Government assumed outright the rights and obligations thereunder in the same manner as the person to whom the contract might have been assigned under a general voluntary assignment. For the contract with its various special stipulations did not exactly answer that which was aimed at by the requisition. That which took place, on the contrary, was that the government, in its own interest, seized the productive facilities of the yard while at the same time setting aside the contract for new-ships concluded by the yard. In our opinion this is the purport of the telegram from the Shipping Board Emergency Fleet Corporation when it states in regard to the new-ship in question: "Contract not requisitioned, ship and material requisitioned." It must furthermore be assumed that the seizure not only implied a postponement of the delivery date under the contract but that it was entirely abolished. This is probably because it could not be anticipated how long the government would need to use the shipyard and because conditions might meantime change so radically that it would become inadvisable to allow the original contract to stand with the sole charge that the date of delivery was postponed. The effect of this requisition was particularly expressed by the fact that the American Government promised compensation upon serving notice of the seizure, which compensation first of all implied a refundment of what the contractor had paid under the contract, all of which seems incompatible with the supposition that the contract was to continue to stand."[1]

The Court accordingly reaches the conclusion on this point that "it must be assumed that every obligation devolving upon the Chester Shipbuilding Company under the new-ship contract in question disappears in view of the above mentioned requisition order of August 3, 1917, and that the only thing that remained of the contract was a claim for indemnity against the American Government in favor of the person to whom the shipyard had obligated itself by means of the contract, or else the successors of that person."[2]

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[1] U. S. Counter-case, Appendix, page 405.
[2] U. S. Counter-case, Appendix, page 406.

After discussing the provision of American law forbidding the assignment of claims against the Government, the Court proceeds to address itself to the ultimate question involved, that is, what is the effect of the foregoing conclusions on the relations "between the parties to the present suit."

On this point, the Court finds that

"It cannot be assumed that any of the parties was aware of the real facts with respect to the contract, when the transfer thereof took place from the defendant to the plaintiff.

"* * *. *Particularly can it not be considered to be established that they were aware that every obligation under the contract on the part of the shipyard had disappeared.* Inasmuch as it must therefore be assumed that both parties, in concluding the deal, took it for granted that it was a question of a newship contract henceforth existing, the consequences when this presumption fails must be that the defendant can demand that the deal be revised and the consideration refunded. The fact that the defendant relinquished all responsibility upon making the transfer cannot involve any change in this regard."[1]

In other words, the lower court finds that inasmuch as the Defendant had assigned to the Plaintiff a non-existent contract between himself and the shipbuilding company, whereas both parties assumed that this contract was still in existence, there was a failure of consideration which entitled Plaintiff to rescind his assignment contract with the Defendant. The Court, however, declined to award the Plaintiff damages.

2. The Bestum II in the Supreme Court.

From this decision both Plaintiff and Defendant appealed, Defendant being referred to in the decision above as the "Appellant" and Plaintiff as the "Counter-appellant." Before the case reached the Supreme Court of Norway, the Stray Settlement had been made and J. Ringen, Inc., had received the share awarded to that company by the Board of Arbitration, which distributed the Stray award, and their claim was accordingly reduced by the amount of this award.

The Supreme Court of Norway, Mr. Lie, Assessor Extraordinary (Associate Justice) read the opinion, reversing the opinion of the lower court, and held that J. Ringen, Inc., was not entitled to recover anything, each party being left to pay its own costs. The opinion of the Court proceeded upon the following grounds.

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[1] U. S. Counter-case, Appendix, page 406.

First, the Supreme Court held, in accord with the lower court, that the requisition order of August 3d, applied to "even such new buildings as had not yet been started."

The Supreme Court held that there was

"a general opinion in America, however, and also in this country as based on information from over there was that it was not finally decided in connection with this measure [i. e., 'the requisitioning decree of August 3rd, 1917'] whether the numerous and various new buildings which it concerned, were really thereby lost to the holders of the contracts. Especially it was supposed that it remained an open question whether the affair should end in the taking over of the new buildings as property or for use only."[1]

Further, the Court said:

"But in the beginning of October, immediately after the conclusion of the purchase between the parties the said corporation decided with regard to the new building in question, as with regard to the other newbuildings concerning which negotiations had been going on, that they were requisitioned for property, and not for use only by the requisition decree of August 3rd 1917 and in accordance with this decision the works received orders to finish the ships for the account of the United States."

The Court then drew the conclusion that

"after what thus happened it is evident that the disputed newbuilding contract must be considered as annulled between the counter appellant and the works. It may be questionable whether considering the results of the negotiations the contract should be considered annulled already by the requisitioning decree of August 3rd 1917 or was not annulled till the decision of the Shipping Board Emergency Fleet Corporation had been made in the beginning of October. But as the case stands, I need not make any statement whether one or the other alternative is the correct one."

It will be remembered that Ringen purchased the contract in this case on October 4. Therefore the Court in holding that it is immaterial whether the contract was annulled August 3d or October 6th holds that it is immaterial for the purposes of the case whether the contract was annulled before or after it was purchased by Ringen.

The Court next addressed itself to the main question, that is, what was the effect on the rights of the parties of the annulment of the contract by the order of August 3d. On this point the Court held, first, that the question to be decided is whether the annulment of the contract is to be regarded as "a defect or the consequence of a defect in either the object of the purchase or the chief appellants' title to it,"[2] that is to say, in the language of American law, whether or not there

[1] U. S. Counter-case, Appendix, pages 399–400.
[2] U. S. Counter-case, Appendix, page 400.

was such a total failure of consideration as to justify the recission of the contract. The Court answers this question in the negative on the following grounds:

(*a*) That "both parties had the same facility for obtaining the knowledge of the real significance of the requisitioning decree of Aug. 3rd and what was the outlook as far as the expected American decision was concerned," including the negotiations that were being carried on between "Norwegians and the American authorities with the aim that the holders of the contracts should keep the buildings on the easiest possible terms."

(*b*) But that neither of the parties had knowledge "whether the decree in reality meant the taking over for possession of the new buildings concerned, nor whether the decree would include new buildings which had not at the time been started."

The Court then proceeded as follows; its opinion being too closely reasoned to admit of advantageous summary:

"With regard to the first point, of which the counter appellant thus must be presumed to have no knowledge, it is clear in my opinion that he must have had full knowledge that, if the decree was carried out to the extent allowed to the President of the United States and through him to the Shipping Board, it would deprive the holders of the newbuilding contracts concerned of all claims for delivery according to contract. And with regard to the second point I consider it beyond doubt that in the eyes of the counter appellant as in those of the chief appellant it must have appeared an obviously doubtful issue, whether the decree would not go no farther than that newbuildings not yet started would be outside its provisions; the counter appellant ought to have been fully prepared for the possibility that the decree also would include the latter newbuildings. Nor has it been made evident that the points here were considered of essential importance by the counter appellant at the time of the purchase. On the contrary I am led to assume that the main point in the considerations which led to his purchase, was not what was the exact significance of the requisitioning decree of Aug. 3rd, but the estimate of the various possibilities which were offered as far as the final American arrangement was concerned regarding the newbuilding which was the object of the transaction. Seen in the light of the facts known to the parties at the time of the purchase these possibilities gave wide scope for speculation in the final settlement of the affair. Partly differing opinions as to the final result, partly varying disposition or ability to run the risk which was consequent on the uncertainty, might without difficulty form the basis for a purchase which remained independent whatever the course of the matter would be. And as far as I can see there was fully within what a practical estimate might consider as an obtainable result, a possibility that such a purchase would gain a profit for the purchaser which would compensate his risk, viz, the possibility that the decree

would be declared to be for use during the time of the war or for a short period afterwards, or that the 'just compensation' promised would be fixed generously enough,—or of effectuating a sale to a third party before the reading of the decree was finally determined. According to all evidence in the case I consider it the most probable understanding of the purchase concluded between the parties that it had for its object a matter of speculation of this character. The agreement should then be considered as a "purchase of a chance." Its object is what profit could be made by the newbuilding contract in question, a contract with a weak point, of which it was to be hoped that it would not make the purchase impossible, but which on the other hand gave every reason for fearing the contrary. Considered with regard to the relationship between the parties it is no defect or no consequence of such defect that the contract is annulled for the American works; this fact is nothing but the realization of a risk which was connected with the object of the purchase as such; the counter appellant has received what he bought."[1]

It will appear therefore that the Supreme Court of Norway different from the Christiania Town Court in this: that, whereas both courts appear to have been agreed as to the effect of the requisition order upon the contract, (the Town Court saying in substance that it was not requisitioned "but that it was entirely abolished," i. e., frustrated, while the Supreme Court speaks of its "annulment;") the Town Court believed that this frustration of the contract worked a failure of consideration and gave ground for recision. The Supreme Court held the contrary on the ground that the parties had equal knowledge of the situation, that they both knew that it was full of possibilities, and that they elected with their eyes open to gamble on these possibilities, particularly, (a) "the possibility that the decree would be declared to be for use during the time of the war," (b) "that the 'just compensation' promised would be fixed generously enough," (c) "of effectuating a sale to a third party before the reading of the decree was finally determined." The parties deliberately made a "speculation" on these possibilities. "This agreement should then be considered as a 'purchase of a chance.' * * The counter appellant has received what he bought."

It is submitted that in this language the Supreme Court of Norway writes the epitaph of Norway's theory that the United States is estopped, on account of its "most negligent misrepresentation," from invoking the requisition order of August 3d against these claimants prior to the dates of their respective acquisition of their contracts.

[1] U. S. Counter-case, Appendix, pages 401–402.

D. THE COMPLAINT THAT NORWEGIAN CLAIMANTS WERE DISCRIMINATED AGAINST AS COMPARED WITH AMERICAN CITIZENS AND OTHER NEUTRALS.

The Norwegian case strenuously insists that "the United States did not, as required by the law of nations, treat Norwegian neutrals as favorably as its own nationals.[1]" To this contention there are two answers:

I.

That so far as we are advised in the absence of some specific treaty provision there is no rule of international law which requires any Government to put aliens on terms of equality with its own citizens. If there be such rule, the Norwegian claimants have apparently not been able to discover it, since no authority to that effect is cited by them.

That there is no such general principle of international law would seem to be made clear by the restrictions placed by nations upon the right of aliens to engage in commerce and industry, to fish in territorial waters, to hold real property, as well as by the exaction of taxes from aliens in excess of those exacted from nationals.[2]

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[1] Norwegian Counter-case, page 38.

[2] 1. Restrictions upon the right of aliens to engage in commerce and industry.

It may be observed at the outset that the obtaining of commercial privileges for the alien has given rise to numerous treaties. In the absence of treaty stipulations it may be doubted whether foreign ships have a right freely to enter and depart from the ports of a State. The coasting trade of countries is almost universally reserved to nationals. (Borchard—Diplomatic Protection of Citizens Abroad—page 79.) Concerning the right of aliens to engage in domestic trade it would seem as stated by Borchard that, "In the absence of treaty or law, there is no inherent right to carry on domestic trade." (Borchard—Diplomatic Protection of Citizens Abroad, page 78, footnote.)

Concerning the right of the alien to engage in occupations and callings, the following passage from Hyde is of interest:

"A State may lawfully exercise a large control over the pursuits, occupations and modes of living of the inhabitants of its domain. In so doing it may doubtless subject resident aliens to discrimination without necessarily violating any principle of international law." (Hyde, International Law, Vol. I, page 357.)

It may be observed that the law of France has at times provided that aliens shall not be employed on the public works of a State. At the present time about 12 American States have legislation of this character. The Supreme Court of the United States has upheld as constitutional the New York Act which provides that,

"In the construction of public works by the State or a municipality, or by persons contracting with the State or such municipality, only citizens of the United States shall be employed."

In the opinion of the court there was no intimation that constitutional discriminatory legislation of this character is at variance with the principles of international law. (See Borchard, pages 80–81)—[Heim v. McCall, 239 U. S. 175]. Borchard also states that,

Acting Secretary of State Adee, in a note addressed to the Italian Ambassador on October 1, 1910, in the Maiorano case, clearly negatives the existence of any such rule in the following language:[1]

"It is a fundamental principle of the law of nations that not only may rights conferred upon citizens be reserved from nonresident

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"Ownership in national vessels is often limited in whole or up to a certain percentage to nationals, and employment as officers on national vessels is frequently confined to nationals." (Borchard, page 80.)

2. Restrictions upon the right of aliens to fish in territorial waters.

Concerning restrictions upon the right of aliens to fish in territorial waters the following passage from Borchard is of interest:

"Fishing in costal waters is likewise generally reserved to nationals. This appears to be an almost universal practice which has been confirmed by international treaties and conventions, e. g. the North Sea Convention of 1882. Some States, as, for example, most of the States of the United States, Greece and Portugal, admit aliens to costal fishing." (Borchard, pages 79–80.)

3. Restrictions upon the right of aliens to hold real estate.

On this subject attention is invited to the following passage from Hyde:

"A State enjoys an exclusive right to regulate matters pertaining to the ownership of property of every kind which may be said to belong within its territory. Thus it may determine not only the processes by which title may be acquired, retained or transferred, but also what individuals are to be permitted to enjoy privileges of ownership.

"*A State may not unreasonably forbid aliens, especially if they reside outside of its domain, to acquire or retain property belonging within its territory, and whether movable or immovable.* At the present time States do not appear to be disposed to prevent the acquisition of or succession to movable property by aliens. Numerous treaties of the United States have provided for the enjoyment by such persons of that privilege.

"*A State may be unwilling to permit the succession to and retention of title to immovable property within its domain by persons other than its own nationals, or by aliens who are non-residents. No rule of international law is believed to prescribe a different course.*

* * * * * * *

"The restrictions imposed by the United States in its legislation and reflected in its treaties may appear to reveal a disposition in contrast to that manifested by certain other enlightened States. It should be borne in mind, however, that the extensive area of American territory, both within and without the limits of the several States of the Union, and open and increasingly subjected to use and acquisition by residents of foreign origin and nationality, requires special safeguarding in order to prevent the natural transfer, by inheritance or otherwise, of important interests to aliens not residing in the United States. The continued ownership by such individuals of large and numerous tracts of land within American territory might be fairly regarded as essentially detrimental to the welfare of the Nation." (Hyde, International Law, pages 352–357.)

4. Taxation of Aliens.

It is well established that there is no general rule of international law forbidding States to impose heavier taxes upon aliens than upon their own nationals. See to this effect the following passage from Hyde:

"In levying taxes to defray the expenses of government, no duty is imposed upon a State to leave unburdened either property owned by aliens, or persons who may themselves be aliens. *Nor does any principle of international law forbid the territorial sovereign to impose, in some instances, a heavier burden upon the interests of such individuals than is placed upon those of its own nationals.* The existing practice of enlightened States in so far as it is manifested by conventional arrangements tends, however, to place aliens generally upon an equal footing with nationals. Save in cases indicating a marked abuse of power, or a disregard of the terms of a treaty, the United States does not appear to find in the taxation of its nationals or of their property abroad reasons for diplomatic remonstrance or interposition." (Hyde, International Law, Vol. I, page 361.)

See also the following passage from Martens, a continental writer:

"Strict international law does not even forbid heavier taxes on foreigners than on citizens." (Martens Precis Du Droit Des Gens Moderne De L'Europe, Chapter 88.)

[1] Foreign Relations, 1910, page 664 at 671.

aliens, but even that aliens permanently residing in the country may be denied rights which are given citizens; and this rule applies not only to civil rights, but to property rights as well. In this connection it is necessary to do (no)[1] more than cite, as to civil rights, the all but universal and the unquestioned practice of denying to aliens the right of suffrage; and as to property rights, the very general denial to aliens of the right to hold real property and to have the same descend in the same manner in which real property may be held by and may descend to citizens."

Attention is also invited to the following discussion of the subject by Oppenheim:

"Under the influence of the right of protection over its subjects abroad which every State holds, and the corresponding duty of every State to treat foreigners on its territory with a certain consideration, a foreigner, provided he owns a nationality at all, cannot be outlawed in foreign countries, but must be afforded such protection of his person and property as is enjoyed by a citizen. The home State of the foreigner has by its right of protection a claim upon such State as allows him to enter its territory that such protection should be afforded. In consequence thereof every State is by the Law of Nations compelled to grant to foreigners equality before the law with its citizens as far as safety of person and property is concerned. A foreigner must in especial not be wronged in person or property by the officials and Courts of a State. Thus, the police must not arrest him without just cause, custom-house officials must treat him civilly, Courts of Justice must treat him justly and in accordance with the law. Corrupt administration of the law against natives is no excuse for the same against foreigners, and no Government can cloak itself with the judgment of corrupt judges.

"Apart from protection of person and property, every State can treat foreigners according to discretion, those points excepted concerning which discretion is restricted through international treaties between the States concerned. Thus, a State can exclude foreigners from certain professions and trades; it can, as Great Britain did formerly and Russia does even to-day, exclude them from holding real property; it can, as again Great Britain did in former times, compel them to have their names registered for the purpose of keeping them under control, and the like. It must, however, be stated that there is a tendency within all the States which are members of the Family of Nations to treat admitted foreigners more and more on the same footing as citizens, political rights and duties, of course, excepted. Thus, for instance, with the only exception that a foreigner cannot be sole or part owner of a British ship, foreigners having taken up their domicile in this country are for all practical purposes treated by the law[2] of the land on the same footing as British subjects."[3]

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[1] The word "no" was erroneously omitted in printing this note in "Foreign Relations." The word is contained in the file copy of the note in the records of the Bureau of Indexes and Archives of the Department of State.

[2] That foreigners cannot now any longer belong to the Bar or to the London Stock Exchange, is an outcome not of British Municipal Law, but of regulations of the Inns of Court and the Stock Exchange. Author's note.

[3] L. Oppenheim, International Law, Vol. 1, pages 375–377.

II.

There was in fact no such discrimination as that which is asserted. The character of the property requisitioned, as well as all the surrounding circumstances, fully justified whatever differences existed in the several cases.

It is said in the Norwegian Counter-case:

"Wherever the government requisitioned plant or facilities it took not title, but *use for the period of the war.* It took the use of railroads, of railroad cars, munition factories, coal mines, power plants, street railway lines, telegraph and telephone lines, and lastly, it took the use of ships afloat, both American and Dutch.[1] In all of these cases only *use for the period of the war* was requisitioned and in every case when the emergency passed the thing was returned to its owner."[2]

This is all quite true and the reason for it lies in the following considerations: (1) That these were all things requisitioned by the *Shipping Board* under the authority of the President to take "title *or* possession," while ships under construction and materials, etc., for their completion were requisitioned by the *Fleet Corporation*, under an altogether different power, viz.: the power in absolute terms simply to requisition vessels in process of construction, etc. (2) That completed ships are ready for use and the use of them may therefore be taken, but a partly constructed ship or materials for building a ship, do not admit of an appropriation for *use*, because until built into a ship so as to constitute a completed whole they are incapable of any but an absolute appropriation.[3]

What is true with reference to completed ships is likewise true of everything enumerated in the foregoing quotation from the Norwegian Counter-case. Railroads, railroad cars, munition factories, coal mines, power plants, street railway lines, telegraph and telephone lines, as well as ships afloat, whether American or Dutch or Norwegian are completed things which may at once be put to use, but the keel of a ship, the foundation of a building, doors and windows, piles of lumber, spikes and nails, are so obviously things which cannot be used for a time and then returned to the owner, that an attempt to put them in the same category is simply an in-

[1] As a matter of fact, by virtue of the special arrangement between Mr. Bryn and the Secretary of State, no completed Norwegian ships were requisitioned at all.

[2] Norwegian Counter-case, page 38. Italics of the Norwegian Counter-case.

[3] See *ante*, page 17.

tellectual absurdity, so clear that further discussion would seem to be unnecessary.

It is further asserted, however, that

"in regard to ships under construction, when the owner was an American citizen, the United States found it not only possible but desirable to allow the owner to have title to the ship and to take merely the use; but it treated the foreign owner less favorably."[1]

As we have already said, there is no rule, so far as we are aware, which would forbid such a course on the part of the United States. However this may be, an examination of the facts will disclose perfectly just and valid reasons for any difference in the treatment accorded Norwegian nationals as compared with that accorded our own citizens. It must be first borne in mind that the policy adopted by the representatives of the United States, as already pointed out, was to requisition absolutely these partly constructed ships and materials, and this was in fact done, in the case of American ownership as well as in cases of foreign ownership. The effect therefore was to vest in the United States as of August 3, 1917, complete title to this species of property. Subsequently, as pointed out by the Annual Report of the Shipping Board, of December 1, 1917, as the requisitioned partly constructed vessels approached completion, it became "necessary to determine whether they should be *returned* to their former owners or whether all[2] should be *retained* by the Board."[1]

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[1] Norwegian Counter-case, page 39.

[2] For the purpose of keeping the record straight it should be noted that this word "all" as printed in an extract from the First Annual Report of the United States Shipping Board, on page 80 of the Norwegian Case, and on page 39 of the Norwegian Counter-case, reads "title" in the Annual Report itself.

It is unfortunate in view of the question, now before this Tribunal, as to the real problem under consideration by the Shipping Board between August 3rd and October 4th, namely, whether *title* should be *retained* by the Shipping Board, that the Norwegian Case and Counter-case should misprint the word "all" for the word "title."

In connection with the comparative treatment accorded citizens and aliens in paying compensation for the ships and materials requisitioned, reference is made to the discussion of settlements, ante, pages 56 to 110.

Also interesting in this connection is a colloquy between Mr. Steele and Mr. Gillen in the hearings before the Select Committee on Shipping Board Operations, which was not thought worthy of printing in either the Norwegian Case or Counter-case, among the voluminous transcripts from Mr. Gillen's remarks. It is as follows:

"Mr. Steele. When the American Government comes along and under its sovereign power commandeers those ships, confiscated them, you might say, almost, then *the Norwegian citizens claim that the American Government must compensate them according to the value of those contracts to the Norwegian citizens. That is the claim which they made, is it not?*

"Mr. Gillen. *That is the same claim that has been made by the American citizens under the same circumstances, and we turned down the Americans* * *." Hearings, Select Committee on U. S. Shipping Board Operations, Volume II, page 2365. Italics ours.

For the reasons then stated in that report it was determined that in the case of vessels building for foreign account title should be *retained*—not *taken*, it will be observed. In the case of vessels building for American account, the former owners were given an opportunity to *resume* title on the completion of the vessels under the conditions which were set forth. When the United States requisitioned title to these partly constructed ships and materials, the same became absolutely its own property, to be dealt with and disposed of by the United States as it pleased. There was no rule of law or principle of equity which limited this power in any respect. It could deal with it precisely as with any other property which it owned. The United States, then, owned the property outright, and to suggest that the rights of all former owners with reference to the property continued to stand *inter sese* upon terms of equality is a suggestion so altogether unreasonable as to carry with it its own refutation. An owner of property, whether a nation or an individual, may give to one and refuse to another, may sell to one and refuse to sell to another, or impose conditions upon gift or sale which may be varied as the owner pleases.

The position of the Norwegian claimants would have possessed some plausibility if instead of taking the title outright and vesting absolute ownership *in limine*, the Fleet Corporation had made its requisition subject to the right of American citizens to acquire ultimate ownership of the ships when completed but had denied the same right to foreign owners. In such a case it might be plausibly urged that the requisition unjustly discriminated between our own citizens and neutrals. But that is not the case with which we have to deal. The requisition whether applied to American citizens or neutrals was in precisely the same terms, and with precisely the same effect. The ownership of the property was vested in the United States, and the authority of the United States subsequently to prefer its own citizens in dealing with its own property cannot reasonably be denied. That is precisely what the Government of the United States does with reference to its lands. It sells to its own citizens and refuses to sell to aliens. No good reason is perceived why it may not do the same with any species of property without regard to its former ownership. To deny any Government such a right or to

attempt to penalize it for exercising such a right would be to deny it complete sovereignty.

While we deem it altogether unnecessary, we nevertheless point out for this honorable Tribunal the situation which in any event fully justified the course taken by the United States in this matter. We were engaged in the most deadly war of all history. We were transporting over seas a vast army running into the millions. To equip this army, to keep it supplied with armament and the necessaries of subsistence, required the maintenance of a fleet of vast proportions. This fleet we were obliged to maintain in the face of continual destruction by submarines. What the result of the struggle between the shipyard and the submarine would ultimately be was a matter of speculation rather than knowledge. As Mr. Hurley said, when we entered the war, we found our shipyards largely occupied with the building of vessels for foreign account. "Of course, we could not wait for these ships to be finished for their foreign owners. We must have for our own use every shipbuilding facility in the country, and have them without delay. Accordingly, we were bound at once to lay hold of not only the use of the shipyards throughout the country, but all the shipbuilding material and ship labor as well. This, you see, immediately made it impossible that these uncompleted vessels should be finished for foreign account until the end of the war—and perhaps much later." [1]

On September 14, 1917, Mr. Hurley, writing to the American Secretary of State, pointed out the vital necessity of retaining control of all ships building; that "our own responsibilities will be measured by the number of troops which we eventually will have in France. If the number reaches 2,000,000 men our need for ships will be much greater than it would be if but 1,000,000 of our own men were in France. We can approximate our needs, but our ability to supply the ships needed to maintain our unprecedented lines of communication, 3,000 miles one way and 3,000 miles returning, will be measured by the problematical destructiveness of the submarines." [2]

He went on to say that any step taken towards surrendering a part of the tonnage in American yards would "involve a rash pre-

[1] Mr. Hurley to Senator Nelson, October 17, 1918. U. S. Case, Appendix, page 151.
[2] Mr. Hurley to Mr. Lansing, September 14, 1917. U. S. Case, Appendix, pages 140–141.

diction as to the length of the war, the degree of destructiveness in the future, and all the requirements of our own troops and Allies."[1]

He said that our first duty was to our own troops, fighting on foreign soil far from home; that they must not be placed in jeopardy; that as the war went on and our ability to check the submarines was demonstrated, we might then be better able to determine how far we could go in relaxing control of the ships.

This honorable Tribunal needs not to be reminded of the critical and desperate situation in the autumn of 1917. The black clouds of doubt lowered over the entire world. How many millions of Americans would finally be required in Europe as the titanic struggle proceeded was beyond mortal foresight. Not only did we not know how many ships would be needed during the progress of the war but we had no knowledge and could not reasonably speculate as to how many might be required and for how long a time they might be required after the war came to an end. For aught we then knew it might have been necessary to maintain a very large army of occupation. For aught we then knew, if successful in the war, we might have to occupy the whole of Germany, instead of a limited portion of it. For aught we then knew the process of bringing our men and supplies back to the United States might have been a matter of years. With all these uncertainties and many others that will readily occur to the mind, it would have been manifestly unwise to have taken any steps which might have resulted in a disastrous reduction of our shipping facilities. Hence the wisdom of and the justification for the policy which was adopted of keeping all the ships under control indefinitely,—a policy with which the transfer of ships to American citizens did not interfere and with which a transfer to foreign owners in the light of what was then known or foreseeable might have disastrously interfered.

Mr. Hurley's letter to the Secretary of State seems to excite a spirit of mild ridicule on the part of the Norwegian claimants. But no unprejudiced person can read the letter and the other communications of Mr. Hurley, without being impressed not only with his tremendous earnestness but with his wisdom. In order to determine whether or not his views, as well as the views of others, with

[1] U. S. Case, Appendix, page 141.

reference to the necessity of holding requisitioned ships under governmental control for an indefinite period, were warranted, we must place ourselves in the position which they then occupied and have in mind the conditions which they had in mind. We must, in other words, pass judgment upon what they did by looking forward and determining what might happen rather than from the point of view of the absolute knowledge we now have as to what actually did happen. It is easy enough after an event to criticize what was done, and to insist that it should have been done differently, or not at all. But Mr. Hurley and the others were looking forward into the unknown, about which they must necessarily speculate, while the Norwegian claimants are dealing with events in the retrospect, as to which there is certainty.

It was the hard duty of the former to decide between competing courses of action under the pressure of great responsibility, when victory seemed both far off and doubtful. It is the easy task of the latter to criticize and make light of this decision from the safe vantage ground of assured victory.

It is insisted in the Norwegian case that the real reason for taking title to the Norwegian ships under construction was to make permanent additions to the American Merchant Marine, and excerpts from statements of officers of the Shipping Board and from speeches made in Congress are quoted as tending to support this claim. Such statements must always be taken with caution because, as the Court of Claims of the United States has recently said:

> "Much of it is but the expression of individual opinions, widely divergent, seldom indicative of careful consideration, and binding as a theory upon no one * * *."[1]

It is probably true that some members of Congress, as well as some officials of the government, had in mind that at the end of the war such ships as were left by the submarines would be a valuable addition to the Merchant Marine. Surely there could be nothing improper in pointing out that among the hardships, the vast expense, the destruction of property, the loss of life incident to the war, there was at the end of it all at least the comparatively slight benefit which would result from adding to the Merchant Marine the ships which might be left.

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[1] *Meyer Scale & Hardware Co. v. United States*, decided January 9, 1922.

E. VALUE OF THINGS REQUISITIONED.

I. Definition of Value.

On the subject of values, the Kingdom of Norway and the United States have been discussing two entirely different things. Their conceptions of the thing to be valued have been totally unlike.

The United States has discussed the value of property actually requisitioned on August 3, 1917.

The Kingdom of Norway has discussed things that were not requisitioned at all.

The two governments have failed not only to agree upon the identity of the thing to be valued, but have disagreed on the definition of the word *value*. This difference in both identity and definition may be expressed as follows:

a. The United States contends that in this case the word *value* should be defined as being *intrinsic worth*, and that this Tribunal in measuring value should use as its yardstick the intrinsic worth of the property actually requisitioned.

b. The Kingdom of Norway apparently contends that the word *value* should be defined as the *highest prices paid in a mad speculation*, and that value as thus defined should be applied to things that were never requisitioned.

II. The Contentions of the Parties as to What Was Taken.

Primarily, the difference relates to this question: What was requisitioned? On this question the position of the United States was clearly stated in its Counter-case as follows:

a. "The United States maintains that its agent, the Emergency Fleet Corporation, did not requisition contracts, but took only actual physical property consisting of ships and materials for ships, together with commitments for materials for ships, and that the property which it actually requisitioned is the only thing to be valued."[1]

[1] U. S. Counter-case, page 56.

b. The position of Norway is not so clear. In fact, Norway appears to take several positions, but its two main contentions may be summarized as follows:

(a) That the Fleet Corporation took from the former owners their investment in the ship contracts and that the thing to be valued is this investment.

(b) That the Fleet Corporation requisitioned contracts and that the things to be valued are the contracts.[1]

III. Norwegian Values Based on Gambler's Bets.

Section II of Chapter 1 of the Norwegian Counter-case is devoted to an indignant denial that the claimants were gambling when they traded in the ship contracts. The Counter-case declares:

"Their transactions were not gambling transactions any more than necessary purchases of lumber, copper, steel, leather, cotton or rubber during 1917."[2]

The United States prefers to take the judgment of the Supreme Court of Norway, which has solemnly and deliberately characterized such transactions as the "purchase of a chance."[3]

The highest court of Norway has described these transactions so forcibly and shown the speculative motive so clearly, that we should fail in proper respect to that court to suggest that these claimants were not gambling when they fixed the prices upon which Norway relies to prove its valuations.

Therefore, the United States, supported by the highest judicial authority in Norway, may safely assert that the valuations claimed in the Norwegian Case are based on gambler's bets.

IV. Fictitious Prices to Magnify Claims.

The Kingdom of Norway is not here asking that the United States pay for what it took. It has shown no interest in the actual intrinsic worth of the property requisitioned, but has placed all its emphasis upon the artificial prices created by an unnatural, factitious state of excitement worked up to a fever pitch by the speculative mania that swept Norway under the example set by Christoffer Hannevig.

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[1] "In brief the contention of the Norwegian Government is that the members of the Christiania Group, in good faith, invested their money in ship-building contracts because they wanted the ships thereby provided for and expected to get them; that the United States secured all the benefits of their contracts, and that they lost everything they had invested; and that, therefore, they are entitled to be made whole." Norwegian Case, pages 68, 247, etc.

[2] Norwegian Counter-case, page 26.

[3] U. S. Counter-case, Appendix, page 402.

This Tribunal is asked by Norway to accept, as standard values, these fictitious and purely speculative prices.

Even if these prices were not tainted with their speculative origin, they would still be utterly unacceptable as factors for measuring just compensation.

True values are not determined by transitory prices of the stock-market. Value has a certain quality of solidity and substantiality that is not determined by speculative prices.

V. Norway's Conflicting Positions.

The two positions taken by Norway on the subject of value are quite hostile to each other. First, Norway demands full reimbursement for all the money paid out by the claimants in acquiring their contracts. The Norwegian Case explains its demand for reimbursement as follows:

"The demand of the Norwegian Government, on behalf of these fifteen contract owners, has been put forward as one for reimbursement, and in Chapter Five evidence was produced showing what is required to reach that result. The case of the Norwegian Government has been presented in this manner because reimbursement was the rule adopted by the Shipping Board prior to the Payne Administration, and was the rule applied in settling for the greater part of the requisitioned vessels actually settled for."[1]

As an alternative method of compensation, the Norwegian Case proposes that market values shall be used as a measure.

"If the Tribunal should regard the case as one requiring the payment of the fair market value of the contracts, the result would not be very different. The showing in Chapter Five of what was actually paid for the contracts is probably the best evidence of fair market value.

"In the present chapter we shall produce supporting evidence which will enable the Tribunal to form an opinion as to the fair market value apart from the prices actually paid for the fifteen contracts as shown in Chapter Five. The evidence in this chapter will show; first, in regard to ships afloat, the great increase in value from 1914 to 1918, especially in the latter half of 1917 as indicated by a large number of actual sales; second, the enormous earning power of ships at this time; third, in regard to contracts for building ships, evidence of prices actually paid and of current market quotations from ship brokers; and, fourth, expert opinion as to the value of the contracts here involved."[1]

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[1] Norwegian Case, page 247.

The Norwegian Case indicates that the result would not be very different, whichever method is used. The United States Counter-case gives an illustration which shows that instead of being similar the two theories of compensation are in conflict with each other. That illustration is reproduced here:

"For example, Hull No. 92 and Hull No. 95 are sister ships, similar in every respect, both built by the Seattle Construction & Dry Dock Company.

"Assuming for the moment, for the purposes of argument only, the correctness of the figures of the Norwegian Case and the Norwegian expert, the difference between "reimbursement" and "market value," as measures of just compensation, is as follows:

"*Reimbursement theory without interest.*

Hull No. 92	$1,944,877.26
Hull No. 95	1,507,860.28
Difference	437,016.98

"*Market Value theory without interest.*

Hull No. 92, market value	$2,250,000.	$1,722,000.	net value
Hull No. 95, market value	2,250,000.	1,617,187.50	net value
Difference		104,812.50	

"On the market value theory, the owner of the contract for Hull No. 92 would fail to receive full reimbursement and the owner of the contract for Hull No. 95 would get considerably more than reimbursement."[1]

In suggesting to the Tribunal that "what was actually paid for the contracts is probably the best evidence of fair market value," the Kingdom of Norway is simply asking the court to accept the artificial prices of speculation as the true standard of value.

a. BOTH PROPOSALS APPLY TO THINGS NOT REQUISITIONED.

As the United States understands the purpose of this arbitration, it is to determine just compensation for the property which was requisitioned on August 3, 1917. The Kingdom of Norway is not meeting that issue, but is devoting its discussion to things extraneous to the property requisitioned.

While the United States regards the two theories of reimbursement and market value proposed by Norway as wholly irrelevant

[1] U. S. Counter-case, page 57.

to the issues before this Tribunal, it nevertheless intends to discuss these theories and to demonstrate not only their lack of relation to the direct question to be decided but their intrinsic unsoundness.

1. The Reimbursement Theory.

It should not be necessary to demonstrate the obvious fact that there is not the slightest relationship between the value of property requisitioned and the amounts paid out by claimants. In the face of the illustration given above in the case of Hulls 92 and 95 it would be an absurdity to suggest that the amounts paid by the claimants would represent the value, for that would be equivalent to saying that one of two identical ships of equal actual value is worth $437,016.98 more than the other simply because someone was rash enough to pay that much more. The United States Counter-case quotes a statement on this subject which is worth reproduction here:

"As has been well said, the reimbursement test can not 'be supported on any ground, either of logic or expediency. It would lead to paying A one sum and B another for precisely the same ship. It would protect the speculative buyer and deprive the prudent one of his bargain.'"[1]

Reimbursement if paid, would be not for the things requisitioned but for the contract purchased. That the price at which the contract was purchased has no relation to the things requisitioned, has been well stated by Mr. Edward B. Burling, when Chief Counsel of the Shipping Board. Mr. Burling, in a formal opinion, said:

"The above reasoning is not impaired by the fact that *contracts for construction* of these ships were the subject of barter at high prices. But the thing in those cases traded in was not 'work in process' but a contract right to get a ship. *Its value depended upon the stability and reliability of the contracting shipyard and not upon the character or condition of the materials in the yard.* The barter was the same as the barter in contracts for the future delivery of grain. Nor can it be said that this is a quibble. *It can not be claimed that the thing which we took was the same thing that was the subject of barter in Norway.*"[2]

Mr. Burling's statement states the case of the United States in clear and fitting terms. The thing we took was not the same thing for which the claimants paid their money, and, therefore, to use reimbursement as a measure of compensation "cannot be supported on any ground either of logic or expediency."

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[1] U. S. Counter-case, page 58.
[2] U. S. Counter-case, page 42. Italics ours.

2. The Market Value Theory.

The utter inapplicability of the market value theory of just compensation has been demonstrated so forcibly by Mr. Edward B. Burling in his opinion printed in the United States Counter-case that it seems almost supererogation to say more than he has said.

Mr. Burling asserted most strongly that the property requisitioned had no market value. On this subject, he wrote as follows:

"All that was taken, therefore, was what our Supreme Court has called 'a congeries of wood and iron.' *The contracts were not commandeered.*

"*Was there then any market value for that 'congeries'? Certainly there was not, unless there went with the sale a contract which gave promise to the buyer of a completion of the 'congeries' into a usable ship.*

"No such promise could be given. * * *

"Therefore, I question whether we should allow the assumption to be made that we are dealing with the *market value of ships; that is not the case.* * * * *My suggestion is that we must consider not the value of ships, but the value of the only thing that was taken, to wit, a mass of wood and iron which would never become a ship unless this country diverted ship plates and ship labor from its own ships to these Norwegian ships. And that was something this country was not at all likely to do.*

"Every appraisal company is familiar with this sort of thing. In appraising the assets of any manufacturing concern the appraisal company will divide the tangible assets into, (1) raw material (2) work in process, (3) finished stock.

"The thing in this case must be valued as something to be taken away in its unfinished state. * * *

"*The real question, then, is whether there was any market value for the uncompleted thing with no contract right attached to it. Obviously, there was no such market value.* The value must be arrived at in some other manner. The thing taken must be valued as *work in process.*

"*At the most, the work in process was worth no more than the materials of which it was composed and the labor spent upon those materials.*"[1]

VI. Alleged Market Values Not Real Market Values.

Even if the ships were the things to be valued, the alleged market values submitted by the Kingdom of Norway could not apply. Whatever the identity of the thing to be valued, the valuation must be as of August 3, 1917, when the thing was taken. Therefore it approaches the ludicrous when it is asserted that the values of that date are measured by speculative sales of contracts many weeks

[1] U. S. Counter-case, Appendix, pages 11–13.

later at prices ranging from $200 to $255 per ton for sister ships. Contracts are not ships. Indeed some of the contracts sold did not even promise ships for almost two years after August 3, 1917. The price of a contract in September or October, 1917, could not establish the value of a ship already completed on August 3, 1917, much less the value of a ship to be completed two years later. Assuredly, it could not fix the value of the mass of wood and iron which was all that was requisitioned.

a. VALUE IN THE LONG RUN IS THE ONLY VALUE APPLICABLE TO THE SHIPS.

The word *value* is defined in several senses, but fortunately the claimants have indicated the only sense in which it can be applied to their claims. That sense as given in Webster's dictionary is as follows:

"(c) Proper price; the quantity of money, goods, or services which an article is likely to command *in the long run, as distinct from its price in an individual instance;* a *legitimate* price as distinct from an *unfair* or *extortionate one:*—sometimes called *normal value* in contrast to *market value.*"

The definition of value in this particular sense might well have been written with the Christiania claims in mind. It fits exactly.

To impress this Tribunal with the legitimacy of their transactions, the claimants have taken great pains to show that there was no speculation, that they did not buy to sell, but that they bought to get the ships for *their value in the long run.*

Yet, they ask the court to base its awards on the price of the *individual instance;* they ignore the *legitimate* price and set up the *unfair* and *extortionate* price as the standard; they draw attention away from *normal values*, and attempt to center it upon an alleged *market value* which they themselves have fabricated in about the same fashion that so-called values are made by the wash sales of bucket-shops.

Utility value, or value in use, can hardly be assumed as of August 3, 1917, for ships most of which were years from completion, so that if utility value is to be considered it must be a value to be realized in the future, *a value in the long run.* Barring sentimental value, which the Norwegian Case has not suggested, there would be left only a choice between two kinds of value, one legitimate, the other illegitimate, viz:

(a) A normal, fair, proper value measured by the quantity of money the ships would have been able to command in the long run in the open marts of legitimate commerce.

(b) A speculative value measured by the ability of promoters to persuade other persons to risk their money on the promise of large profits.

b. SPECULATIVE VALUES BARRED BY CLAIMANTS.

However, the claimants have made this choice easy, for they have denied any speculative intent, and a purpose only to get the ships for use in their permanent and established trade. Let the claimants speak for themselves:

Jacob Jacobsen, Claim No. 4, account of hull No. 92.

"But in a case like this, where the ordinary occupation of the man who started the company was shipowning and where a company with a capital of Kr. 4,000,000.00 was formed to take over the new vessel, *it is quite evident that the purchase was not made as a speculation with the idea of reselling the contract.*"[1]

Karl A. Thorbjornsen, Claim No. 5, account Hull No. 17.

"The position is illustrated by the fact that the company received several inquiries as to whether it was willing to sell the New Jersey contract at about $260 per ton, an offer which was refused because the *company itself wished to operate the vessel and was sure of obtaining same.*"[2]

Harry Borthen, Claim No. 14, account of hull No. 206.

"I could have sold the contract several times at $265 per ton d. w., but declined same as I found the price I had paid so reasonable that I preferred to operate the steamer on my own account."[3]

H. Karluf Hanssen, Claim No. 9, account of hull No. 1012.

"In the fall of 1917 we held the opinion, that * * * it would be of great interest for our business to secure tonnage *which could be delivered shortly after the Armistice.* We preferred this rather than to buy expensive old ships with the risk of losing them shortly after they were purchased, and in case they were not destroyed during the war, they would be too old and would have to go out of line *after the Armistice.*"[4]

It will be noted that in the above quotation the claimant goes on record as looking far into the future, even wishing to avoid the risks involved in the immediate possession of the ship.

C. K. Christophersen, Claim No. 8, account hull No. 1011.

"It will be seen above that the company bought this contract solely with the intention of continuing its shipping business. * * * *It*

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[1] Norwegian Case, page 200. Italics ours.
[2] Norwegian Case, page 206. Italics ours.
[3] Norwegian Case, page 241–242.
[4] Norwegian Case, page 228. Italics ours.

was the ship we wanted, so as to enable the company to carry on its trade."[1]

Tryggve Sagen, Claim No. 6, account hull No. 2.

"The general opinion in Norway was that the Norwegian new-building in America would eventually have to sail for account of the American Government on time charter basis during the war, *but that the ships in such case would be turned over to the Norwegian owners again after the war.* * * * * In this case there was absolutely no speculation in the purchase of the new building in question. The board considered this purchase a regular disposition to run the company's business along the lines and for the purpose it had been started, namely for regular shipping trade, which has always been and will be the most important part of the National trade of Norway."[2]

Mr. Sagen, it will be seen, was looking forward to that period after the war and wanted the ship for the regular shipping trade.

c. EXPERT FOR NORWAY SAYS THEY LOOKED TO THE FUTURE.

Another evidence that speculative values must be dismissed from consideration is the affidavit of Frank S. Martin, the American shipping expert employed by the claimants to state their alleged intent and at the same time to substantiate valuations directly in conflict with the declared intent. Mr. Martin says in his affidavit:

"Shipping men were looking ahead to the conditions which would prevail at the close of the war. At the rate of the submarine sinkings then going on, it was anticipated that at the end of the war there would be a very great shortage of ships and it was anticipated that the possession of ships at that time would be of even greater value than during the war. For that reason, in my judgment a contract for the delivery of a ship in 1918, or the first few months of 1919, would be worth nearly, and in some cases, the value of a prompt ship."[3]

Other quotations could be given to show the effort of the claimants to prove that they were looking forward to the future of the shipping business and were not actuated by the speculative value of the moment.

These unintended admissions that the *value* of the ships *in the long run* was the main consideration in making purchases lead to this very pertinent question: *What would the value have been if the*

[1] Norwegian Case, page 224. Italics ours.
[2] Norwegian Case, page 213. Italics ours.
[3] Norwegian Case, page 266.

Fleet Corporation had not requisitioned? The answer is clearly made by the facts in the record:

(a) Bankruptcy for the corporation owning the three ships used in the Norwegian Case as its outstanding evidence in an endeavor to prove enormous values for ships and vast profits for ship owners.[1]

(b) Ships going begging today at about one-tenth of their cost.[2]

(c) A collapse of the freight market with losses instead of profits.[3]

(d) Idle ships bringing in no return but costing their owners enormous sums for maintenance and depreciation.

d. "FABULOUS PROFITS" LEAD TO BANKRUPTCY.

The illusory quality of the ephemeral values upon which Norway has founded its claim has no better illustration than in the very case which the claimants have put forward as their main feature in the attempt to prove the fabulous profits that would have been enjoyed but for requisitioning.

This enlightening example involves the so-called Nafra ships. There were three of these ships, the "Chincha," "Eurana," and "Santa Cecilia," all bought in 1917 by the Nafra Company, Inc. The alleged cost of these ships is given by the Norwegian Case to show the almost incredible values prevailing, and the alleged earnings are set forth to prove that these high valuations were more than conservative. Here they are, taken from page 250 of the Norwegian Case:

Cost including financing:

"Santa Cecilia"	$355.72 per d. w. t.
"Eurana"	342.10 per d. w. t.
"Chincha"	349.23 per d. w. t.

Annual rate of Net Earnings in 1917:

"Santa Cecilia"	$239.09 per d. w. t.
"Eurana"	387.74 per d. w. t.
"Chincha"	317.69 per d. w. t.

Note that the alleged earnings are stated as *net* earnings, not gross.

With such earnings it is remarkable that the Norwegian claimants have exercised such restraint in fixing the values claimed. Why claim such insignificant values as $300 or $400 per ton? The average earnings shown above are $314.84 per deadweight ton per year. *This is 5% on a valuation of $6,296.80 per deadweight ton.*

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[1] U. S. Counter Case, Appendix, page 471.
[2] U. S. Counter-Case, Appendix, page 457.
[3] Norwegian Counter Case, Appendix, page 214.

1. Ships "Worth" Over $6,000 per d. w. t. At Bargain Price of Only $349.00.

Think what a bargain the Nafra Company made in this purchase! Even with the heavy cost of financing, the average cost of three ships was only the trifling sum of $349. per deadweight ton, whereas, when capitalized on the basis of their earnings, they were worth *more than $6,000. per d. w. t.*

The costs and earnings as shown are actually and seriously submitted in the Norwegian Case. They are not sworn to, but are printed as a communication from A. H. Whan & Co., Accountants and Auditors.[1]

2. Only the First Chapter Given in Norwegian Case.

The Whan memorandum as presented in the Norwegian Case tells only the beginning of the story. Standing alone, it creates the impression that the Nafra Company, in its purchase of the three ships, made a remarkably wise and exceptionally profitable investment.

However there is a sequel to the story as told by Mr. Whan. This sequel shows the fallacy of depending upon transitory conditions to establish a standard for sound, permanent values.

The instance which the Norwegian Case cites as if it were a wise investment turns out to be simply a rash venture by a single corporation.

3. The Nafra Company Helps Form a New Corporation.

Mr. Whan did not tell of the formation of the Green Star Steamship Corporation to take over the holdings of the Nafra Company. The Green Star Steamship Corporation was organized by J. Mercadante who controlled the Nafra Company. The new company was formed on July 31, 1919, with an authorized capital stock of $10,000,000. It took over the "Chincha," "Eurana," and "Santa Cecilia," at a price of $230. per d. w. t.

To all intents and purposes, so far as the questions here involved are concerned, the Green Star Steamship Corporation was a continuation of the Nafra Company under another name.[2]

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[1] Norwegian Case, pages 250–251; Norwegian Case, Documentary Evidence, pages 304–305.

[2] U. S. Counter-case, Appendix, page 436.

4. Nafra Company Deficit in Year of Enormous Profits $1,335,619.31.

Apparently the organization of the new company was due to the bad financial condition of the Nafra Company. Despite the marvelous earnings reported by Whan & Co. for the year 1917, the Nafra Company's balance sheet of December 31, 1917, showed a deficit of $1,335,619.31.[1]

This balance sheet was submitted to the Bureau of Internal Revenue attached to its corporation excess profits tax return for the year ending December 31, 1917.[2]

From this brief it appears that at the end of 1917, the value of the three ships instead of being over $6,000. per d. w. t., as suggested by the Whan memorandum, was only $175. per d. w. t. The owners had discovered something about the stability of actual values as contrasted with the unsubstantiality of fictitious values. The brief explains that the original price of $303. per d. w. t. not including the cost of financing was made up of two elements:

(a) The permanent value of the ships which was stated at $175. per d. w. t.

(b) The special value for use during the war which was stated at $128 per d. w. t.[2]

The United States respectfully requests this Tribunal to contrast the Whan statement in the Norwegian Case with the balance sheet of the Nafra Company for December 31, 1917.

5. Whan & Co. Get a Receiver for the Ships that Earned "Fabulous Profits."

It is worth while to follow the experience of the three ships, "Santa Cecilia," "Chincha," and "Eurana." As stated, they were taken over by the Green Star Steamship Corporation in 1919. By that time the Whan profits had vanished. The Green Star Steamship Corporation was able that year to go into the open market and purchase from the G. M. Standifer Construction Company five vessels at $165 per deadweight ton.[3]

After the Standifer contract, the Nafra-Green Star promoters received another lesson in the difference between real and fictitious

[1] U. S. Counter-case, Appendix, page 472.
[2] U. S. Counter-Case, Appendix, page 439.
[3] U. S. Counter-Case, Appendix, page 436.

values. Their experience is indicated in a letter of April 14, 1920, from the Green Star Steamship Corporation to the United States Shipping Board; a part of that letter was as follows:

"Since the company's programme was mapped out last Fall, the attitude of the New York banks seems to have completely changed and we have found it absolutely impossible to obtain any credit whatever on the five Standifer steamers, with the exception of short term loans aggregating $1,100,000, * * * * * Our efforts to obtain a bond issue at the rate of $100 per deadweight ton have wholly failed, although such a bond issue had been tentatively arranged before we signed the contract, and it was largely on the strength of this arrangement that we purchased these steamers. *One of the banks which we approached in this connection recently took the advice of a supposedly independent shipping expert, who advised that the value of new steel tonnage under the American flag was $100 to $110 per dead-weight ton.*"[1]

6. The Final Chapter.

The conclusion of this story of fabulous values that vanished is found in the records of the United States District Court for the Southern District of New York. The Case is:

A. H. Whan & Co., plaintiffs, vs. Green Star Steamship Corporation, defendant.

This is the same A. H. Whan & Co., who in the Norwegian Case tells of the enormous values and profits. As plaintiffs, Whan & Co. cite the fact that the defendant Steamship Corporation owned the "Chincha," "Eurana" and "Santa Cecilia," and certain other ships. Furthermore, the plaintiffs allege as follows:

"Twelfth.—Plaintiffs aver upon information and belief that defendant Steamship Corporation is without means to effect loans for the purposes of curing the existing defaults under the aforesaid mortgages or of meeting its current obligations and is without collateral available for such purpose; *that by reason of the existing conditions in the shipping business it is impossible at the present time for the defendant Steamship Corporation to operate its fleet of vessels at a profit over and above operating expenses;* and that defendant Steamship Corporation has no means at hand with which to meet its immediate and pressing needs in operating its fleet of vessels; that many of the creditors to whom defendant Steamship Corporation is liable are pressing it for immediate payment; and that the trustees under the aforesaid mortgages are pressing defendant Steamship Corporation immediately to remedy existing defaults under the aforesaid mortgages; * * *"[2]

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[1] U. S. Counter-case, Appendix, page 437. Italics ours.

[2] U. S. Counter-case, Appendix, pages 468–469. Italics ours.

The defendant corporation filed an answer to the bill of complaint made by Whan & Co. In answering the defendant said:

"First.—The defendant admits all the allegations of said Bill of Complaint.

"Second.—The defendant, reiterating the preceding articles of this answer, joins in the prayer of said Bill of Complaint."[1]

An affidavit was submitted by Joseph Mercadante, President of the Green Star Steamship Corporation, who swore that the Bill of Complaint as filed by Whan & Co. was true.[1]

On the 4th day of October, 1921, Robert C. Adams was appointed Receiver for the Green Star Steamship Corporation on the complaint of A. H. Whan & Co.[2]

VII. Norway's Experts On Valuation.

The Kingdom of Norway has sought to support its asserted values by submitting affidavits from two experts. These experts fail to agree with each other.

The first expert presented is Frank S. Martin, whose affidavit appears in the Counter-case. Mr. Martin is an American of widely recognized reputation.

Evidently, Mr. Martin's affidavit was regarded as entirely too conservative, for in the Norwegian Counter-case another expert is presented with a sworn statement which talks easily of ship prices of $400 and $425 per D. W. T. The second expert is Mr. V. Reimann.

One difficulty with these two experts is that their affidavits deal entirely with a question which is outside the issues. They give their opinions on the possible sale prices of contracts, which were not requisitioned, but are absolutely silent concerning the values of the things which were requisitioned. Consequently, their opinions can have no application to the question of just compensation. As Mr. Burling has pointed out so well, "the contracts were not commandeered," so there is no relevancy to be found in any discussion by experts of the prices at which the contracts might have been sold.

a. FRANK S. MARTIN.

Mr. Martin qualifying as an expert says:

"That during the war and afterwards he was also a member of the Ocean Advisory Board on Just Compensation—a Board created

[1] U. S. Counter-case, Appendix, page 470.
[2] U. S. Counter-case, Appendix, page 471.

by the Shipping Board for the purpose of establishing the values of vessels requisitioned by the Shipping Board and subsequently lost or taken by the Shipping Board for use.

"Said Board recommended to the Shipping Board the just compensation to be paid the owners of vessels thus lost or taken."[1]

Mr. Martin fails to give any examples of the recommendations he made as a member of the Ocean Advisory Committee. As his recommendations in that capacity have an important bearing on his valuations as an expert for Norway, the United States has taken the liberty of including with its Counter-case certain examples of the recommendations to the Shipping Board.[2]

1. An Enlightening Parallel—Martin vs. Martin.

Set side by side, Mr. Martin's valuations as a member of the Ocean Advisory Committee and his valuations as the expert of Norway make a very enlightening parallel. Here are a few for purposes of comparison:

MR. MARTIN'S VALUATION AS A MEMBER OF THE OCEAN ADVISORY COMMITTEE.	MR. MARTIN'S VALUATIONS AS AN EXPERT FOR NORWAY.
S. S. CALIFORNIAN "Ship of the best type" 9,125 D. W. T. Sunk June 22, 1918 Replacement value — $220 per d. w. t.	S. S. VITTORIO EMMANUELE II (No. 95) "Was a valuable type" 7500 D. W. T. Delivered June 27, 1918. Valuation—$300. per d. w. t.
S. S. NECHES 7175 D. W. T. Sunk May 14, 1918 Replacement value — $220. per d. w. t.	S. S. SACRAMENTO (No. 92) 7500 D. W. T. Delivered January 1, 1918. Valuation—$300. per D. W. T.
S. S. BUENAVENTURA 8200 D. W. T. Sunk September 16, 1919 Replacement value — $200. per d. w. t.	S. S. WESTBROOK (No. 2) 8800 D. W. T. Delivered March 30, 1918. Valuation—$300. per D. W. T.

[1] Norwegian Case, page 261.

[2] U. S. Counter Case, Appendix, page 407–412.

MR. MARTIN'S VALUATION AS A MEMBER OF THE OCEAN ADVISORY COMMITTEE—Continued.

S. S. GEORGE L. EATON
3500 D. W. T.
Sunk June 22, 1918.
Replacement value — $200 per d. w. t.

S. S. PINAR DEL RIO
4060 D. W. T.
Sunk June 18, 1918.
Replacement value — $175. per D. W. T.

S. S. HARRY LUCKENBACH
4311 D. W. T.
Sunk Jan. 6, 1918.
Replacement value — $175. per D. W. T.[1]

MR. MARTIN'S VALUATIONS AS AN EXPERT FOR NORWAY—Continued.

S. S. LAKE LIDA (No. 88)
3500 D. W. T.
Delivered May 25, 1918.
Valuation—$275. per D. W. T.

S. S. CASTLETOWN (No. 203)
5000 D. W. T.
Delivered June 9, 1919.
Valuation—$265. per D. W. T.

S. S. SHELTER ISLAND (No. 1014)
4300 D. W. T.
Delivered July 30, 1920.
Valuation—$265 per D. T. W.[2]

The foregoing were all cargo vessels. The valuations in the first column represent Mr. Martin's replacement valuation as of the time of the respective sinkings of the ships. The valuations in the second column represent his valuations of Norwegian ships, presumably at time of delivery, for he says the owners wanted the ships to use. It is true that he sets his values for the Norwegian ships as market value as of August 3, 1917, but this valuation is practically translated into valuations at delivery by his statement that a contract for a ship for delivery in the first few months of 1919 was worth nearly and in some cases as much as a prompt ship.

It is difficult to reconcile differences such as $80 per D. W. T. as disclosed between the valuation of the "*Californian*," described by Mr. Martin as "a ship of the best type" and Hull No. 95, described by Mr. Martin as "a valuable type of ship."

The instances shown above are typical of the many valuations made by Mr. Martin and his associates on the committee.

2. A Second Parallel—Martin's Values vs. Facts.

It is of course impossible to take such valuations as Mr. Martin's seriously in view of the facts that actually existed in 1917. The value of ship contracts is best illustrated by prices at which they could be made at that time. The Fleet Corporation made a large number of contracts in or about August, 1917, at prices slightly more than 50% of the valuations set by Mr. Martin for ships

[1] U. S. Counter Case, Appendix, pages 407–412.
[2] Norwegian Case, pages 260–266.

of similar type. Out of 1,120 contracts for steel cargo ships completed for the Fleet Corporation under contracts made largely after August 3, 1917, the average cost as reported by the Fleet Corporation was only a little more than $200 per D.W.T.[1]

2a. MR. MARTIN IS INCONSISTENT IN HIS VALUATIONS.

The inconsistency of Mr. Martin's valuation is shown quite forcibly in the case of hull No. 17, built by Skinner & Eddy Corporation, and hull No. 2, built by the Columbia River Shipbuilding Company. On the first hull is placed a valuation of $275 a ton; and on the second, $300 a ton.

Both are 8800 ton deadweight ships, both cargo steamers, each with Scotch boilers and turbines, and both equipped for coal or oil burning. The dimensions are identical, and the description of the vessels as given in the contracts is exactly the same.

2b. THE TIME FACTOR DISREGARDED BY MR. MARTIN.

Mr. Martin makes it quite clear that he disregards time as a factor, so we may know that the lower value was not placed upon hull No. 17 because of its later contract date of delivery. Actually it was delivered only 26 days later than hull No. 2.

Hull No. 17 was delivered two months before hull No. 95, built by the Seattle Construction & Dry Dock Company, but on the latter hull Mr. Martin placed the larger valuation of $300. Mr. Martin sets the same price of $300 on the value of the contract for hull No. 92 as he does on Hull No. 95, although hull No. 92 was 59.9% complete on August 3, 1917, and hull No. 95 was only 30% complete. Hull No. 92 was delivered 5 months ahead of the other hull.

Mr. Martin's other valuations indicate that he did not regard difference in time of delivery as affecting values as of August 3, 1917. He sets a uniform valuation of $265 per deadweight ton for the five contracts with Pusey & Jones though the contract delivery dates varied widely as shown below.

Hull No 1010 November 1, 1918
Hull No. 1011 December 1, 1918
Hull No. 1012 January 1, 1919
Hull No. 1013 February 1, 1919
Hull No. 1014 March 1, 1919.

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[1] U. S. Counter-case, Appendix, page 458.

3. Actual Contract Prices Compared With Martin's Valuations.

Mr. Martin fixes the fair market value of the contract for Hull No. 95 at the Seattle Construction & Dry Dock Company as $300. per deadweight ton on August 3, 1917. He stated that the ship provided for was a valuable type.

Hull No. 95 was planned for a deadweight capacity of 7500 tons, with a speed of 10½ knots, 3 Scotch boilers and a reciprocating engine of 2100 horse power. The vessel was a coal burner.

On July 3, 1917, exactly one month before the date used by Mr. Martin the Fleet Corporation executed a contract with the Downey Shipbuilding Company for ten (10) 7500 ton ships of 10½ knots speed, with three Scotch marine boilers and triple expansion engine of 2500 horse power. They were oil burners.

The contract price per deadweight ton was only $155. or slightly more than half the value fixed by Mr. Martin for hull No. 95. The Downey vessels were of a more desirable type, being oil burners.[1]

The keel for the first Downey Ship was laid on November 24, 1917, only three weeks after the keel for Hull No. 95 was laid.

Obviously, under Mr. Martin's forward-looking point of view, the Downey contracts were worth approximately the same as the contract for Hull #95. That they were not worth $300. is indicated by the fact that the shipbuilder took the contract at $155.

Mr. Martin calls attention to the fact that the contract date of delivery for Hull No. 95 was September 29, 1917, but it would have been a very careless expert who would have advised a prospective purchaser to pay $300. per ton because of this early date set in the contract. If Mr. Martin had gone thoroughly into his subject he would have found that the conditions made it unlikely that Hull No. 95 would be delivered for almost a year after the contract date.

Actually, the ship was not delivered until June 27, 1918.

Contract No. 4 with the Los Angeles Shipbuilding & Dry Dock Company was made for eight ships, two of which were at $162.60 per ton and six at $152.60 per ton, and two 8800 ton ships were delivered under this contract before Hull No. 95 was delivered.[1]

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[1] U. S. Counter-case, Appendix, page 467.

4. Mr. Martin's Testimony in Brooks-Scanlon Case.

Frank S. Martin appeared as an expert witness in the matter of the claim of the Brooks-Scanlon Company, on account of the requisitioned ship "M. J. Scanlon." This was a steel freighter of 8597 D. W. T. with a speed of 10½ knots, three scotch marine boilers and one triple expansion engine. In taking his deposition, counsel asked the following question:

"Question. We have a case here where the original contract for construction was signed as far back as March 20, 1916, its construction entered upon and taken over by the Government August 3, 1917, the contract calling for completion February 1, 1918. Will you state what the value of the contract was on August 3, 1917, as nearly as you can?

"Answer. *I would say not less than $225 a ton.*

"Question. I have asked you at this point for your judgment based on selling price of vessels. What would you say of the reproduction cost of the M. J. Scanlon as of the proposed date of completion, February 1, 1918?

"Answer. *Between around $210 and $215 a ton; in that neighborhood.*"

* * * * * * *

"Question. Under the circumstances that I have now stated what would you say was the value of the contract in effect when taken over by the government on August 3, 1917; would you say that it was worth as much then as it was in February of 1918?

"Answer. *The actual value of the contract would be about $225 a ton, less payments made and interest.*"[1]

4a. MR. MARTIN'S VIEWS ON RESPONSIBILITY OF SHIPBUILDER.

In the case of the "*M. J. Scanlon*," Mr. Martin laid considerable stress upon the question of a shipbuilder's responsibility, and he swore that he based his testimony on his knowledge that the New York Shipbuilding Company was a perfectly solvent, going concern. He said he would not place any reliance on many of the contractors as to delivery.

This is in striking contrast with his valuations of the New Jersey Shipbuilding Company hulls, which were small ships of much less value per D. W. T. than the "*M. J. Scanlon*," and which were under contract by a company that had no yard and which admitted soon after requisition that it could not provide funds to complete the yard. This makes his valuations of $265 per ton as compared with valuation of $225 per ton for the "*M. J. Scanlon*" take on an aspect of absurdity.

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[1] U. S. Counter-case, Appendix, pages 305–311. Italics ours.

b. V. REIMANN.

The affidavit of Mr. V. Reimann is closer to the Norwegian purpose than the Martin affidavit. It explains why contracts with the Christoffer Hannevig concern, the Pusey & Jones Company, were of value and why contracts with the New Jersey Shipbuilding Company, though it had no yard, "gave a great feeling of confidence in the ability of this yard to turn out satisfactory ships."

From the very beginning Mr. Reimann is liberal with his valuations. He says:

"In general, the prices mentioned below may be taken as average prices for good-size steel cargo steamers:
"Middle of 1917 about $300 to $350 per d. w. t.
"Middle of 1918 about $375 to $425 per d. w. t." [1]

Another statement was:

"Even at $300 per d. w. ton a buyer might figure on *an entire return of his capital within one year.*" [2]

Mr. Reimann asserts that on August 1, 1917, the value of prompt ships was at least $300 a ton and that a ship to be delivered twelve months later was worth not much less than that.[3]

Mr. Reimann is quoted as follows:

"The owner of a contract for a ship that had been started *and for which there was sound expectation of delivery within the twelve months following August 1, 1917*, would have had no difficulty in selling his contract at a price of approximately $300 per ton, from August 1, 1917, to the end of that year." [4]

Aside from the figures suggested the trouble with the quoted statement is that it refers to a condition that did not exist. The qualification which we have shown in italics was the stumbling block. In not one of the cases before this Tribunal was there "sound expectation" of ever getting a delivery of the ship in question.

1. Time Factor Recognized by Mr. Reimann.

Mr. Reimann does recognize that time might be a factor in values. He states that the value of ships delivered from August 1, 1918, to August 1, 1919, would be less than the earlier ships, and would "range from $250 and up."

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[1] Norwegian Counter-case, Appendix, page 141.
[2] Norwegian Counter-case, Appendix, page 142. Italics ours.
[3] Norwegian Counter-case, Appendix, page 142.
[4] Norwegian Counter-case, Appendix, pages 142–143. Italics ours.

Mr. Reimann divides the fifteen ships into four classes and gives valuations as follows:

Class 1. Including: Hulls 87 and 88, Manitowoc Shipbuilding Company.

Valuation:

"In my judgment, at any time in 1917, after August 1st, these *contracts* would easily find buyers at a price between $250 and $300 per d. w. ton."[1]

Class 2. Including: Hull No. 95 Seattle Constr. & D. D. Co.
Hull No. 92 " " " " "
Hull No. 17 Skinner & Eddy
Hull No. 2 Columbia River S. B. Co.

Valuation:

"These four *contracts* were all of very great value. After August 1, 1917, I feel sure that they could all have been sold to reliable ship concerns at a price in excess of $300 per d. w. ton. When the ships were actually delivered in the early part of 1918, *as free vessels*, they no doubt would have found buyers easily at a price of $400 per d. w. ton."[2]

Class 3. Including the five Wilmington contracts with the Pusey & Jones Co.

Valuation:

"I believe, however, that the value of *these contracts* at any time from August 1, to the end of the year, 1917, was not less than from $250 to $275 per d. w. ton."[2]

Class 4. Including the four contracts with the New Jersey Shipbuilding Company.

Valuation:

"Taking all these facts into consideration, and especially the demand for ships, I consider that the *contracts* in question *could have been sold* at any time in 1917, after August 1st, at a price of $250 to $260 per d. w. ton."[3]

Mr. Reimann tells us that he thinks the *contracts could have been sold* for $250, $260, $275 and $300 per ton, but he doesn't say a word concerning the value of the property requisitioned. He talks of $400 per ton for free ships, but doesn't call attention to the fact that these ships even when completed were not free ships.

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[1] Norwegian Counter-case, Appendix, page 144. Italics ours.
[2] Norwegian Counter-case, Appendix, page 145. Italics ours.
[3] Norwegian Counter-case, Appendix, page 146. Italics ours.

In discussing the New Jersey contracts Mr. Reimann is frank enough to say:

"I consider these contracts on the whole the least valuable of the contracts we have been discussing. * * * * *The yard was not yet completed and there was an element of uncertainty in the situation.* * * * * *In ordinary times, when buyers have a choice, the fact that the yard is not complete would affect the value of the contracts very much*, but owing to the special conditions, I firmly believe that the New Jersey contracts could be sold at prices not much less than the contracts of Pusey & Jones Company, and *in this connection must be borne in mind the fact that the New Jersey Shipbuilding Company was known to be a Norwegian owned yard, and managed by Norwegian shipbuilders known to be the best in the world.* * * * *Only the fact that the New Jersey yard was laid out by Norwegian engineers and managed by Norwegian trained shipbuilders gave a great feeling of confidence in the ability of this yard to turn out satisfactory ships.*"[1]

Quite a tribute to an oozing marsh that on August 3, 1917, was a shipyard on paper,[2] with only Christoffer Hannevig, unable to meet bills for construction, to back the yard!

The best comment upon Mr. Reimann's valuations for the New Jersey ships is contained in a letter of December 17, 1917, from Hannevig's lieutenant Bullowa, containing the following statement:

"Mr. Hannevig is willing to accept $175 per ton deadweight for Nos. 201, 202, 207, 208, 209, 210, 211, and 212."[3]

These ships were designed to be identical in size, and in every other respect with the ships under the four contracts with the New Jersey Shipbuilding Company of which Reimann has said:

"I consider that the contracts in question could have been sold at any time in 1917 after August 1st at a price of $250 to $260 per deadweight ton."

If Mr. Reimann was correct in his statement it is to be wondered that Mr. Hannevig was so anxious to get the Fleet Corporation to pay $175 per ton for similar vessels.

Mr. Hannevig has another letter in the record which serves as a commentary upon the values used by both Mr. Martin and Mr. Reimann. Under date of July 16, 1918, Mr. Hannevig makes a proposal regarding an 8,800 ton ship at $225 per ton. In discussing this he says:

"This price might seem perhaps $5 or $10 over present rates, * * *"[4]

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[1] Norwegian Counter-case, Appendix, page 146. Italics ours.

[2] See panoramic photograph of the New Jersey yard as of August 1, 1917, opposite page 212, U. S. Case, Appendix.

[3] U. S. Case, Appendix, page 276.

[4] U. S. Counter-case, Appendix, page 10.

Mr. Reimann has talked of prices as high as $400 per ton for ships delivered in 1918.

It was in this same letter that Hannevig proposed a settlement at $237.50 per ton on all the Norwegian ships.

Regarding Mr. Reimann's reassuring statement concerning the confidence-begetting character of the New Jersey yard, it is well to quote from a letter of December 17, 1917, signed by Hannevig's right hand man Bullowa. That letter says:

"The situation briefly is this: Mr. Hannevig expected to be able to finance the completion of New Jersey through the sale of contracts to Norwegian buyers where the price would be $250 per ton. This source has been cut off by the action of the Emergency Fleet. * *

"The position today is, therefore, with the New Jersey Shipbuilding Company, they find themselves without funds for the reasons above stated.

"In order not to delay the construction of the vessel it will, therefore, be necessary to find about one and one-half million dollars, which can be done in the following manner:"[1]

Mr. Bullowa then proposed a settlement at the rate of $175 per ton.

The condition of the New Jersey yard on August 3, 1917, is further indicated by a letter from Charles Kimmich who at that time occupied a confidential position with Hannevig and with Pusey & Jones Co. Mr. Kimmich, in a memorandum said:

"The New Jersey plant at Gloucester was in the first stages of construction on August 3, 1917, and this yard had contracted for eight ships with the Manss Steamship Co., and four considered stock ships at that time, making twelve in all.

"According to the construction by the Emergency Fleet Corp., the Manss Steamship Co. and the Pusey & Jones Co., were one and the same. Therefore, according to such construction, Mr. Hannevig was in a position to discontinue further work in the construction of this plant and assume no further obligations."[2]

c. VALUES AS CONSIDERED IN NORWAY.

That the people of Norway did not at the time of the requisitioning believe the values of the ships to be as high as now claimed is indicated by many things, among them, the newspaper comment at the time. On September 22, 1917, the Aftenposten published an article on the requisitioning and made the following comment:

"The tonnage comprised by Wilson's first Requisition Order in the middle of the month of July amounted to about 300,000 tons to a value of nearly 200 million kroners."[3]

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[1] U. S. Case, Appendix, page 276.
[2] U. S. Case, Appendix, page 353.
[3] U. S. Counter-case, Appendix, page 326.

At the rates of exchange prevailing at that time the figures given by the Aftenposten indicate the valuation of a little more than $200 per ton.

On July 18, 1917, the Norwegian newspaper Morgenbladet published a story on the requisitioning then under contemplation. In this article there was the following statement:

"If the average cash value is estimated at 700 to 800 crowns per ton d. w. (at a low estimate) for the requisitioned 270,000 tons, which were to be completed in the course of the Autumn of this year, the amount ascends to 180–200 million crowns." [1]

At the rate of exchange indicated by some of the transactions of that period, this estimate would be about $220 per ton.

VIII. Reproduction Theory of Valuation.

It can not be contended successfully that the cost of reproducing a thing measures its value, but it can be argued with conviction that vessels as of August 3, 1917, were not worth more than the cost of contemporaneous reproduction. The experience of the Fleet Corporation has shown that the cost of production was in many instances far greater than the value of the ships produced. This was natural under the abnormal conditions that prevailed with excessive wages going hand in hand with inefficiency and with every energy of the government being devoted to the procurement of ships without regard to price. The situation has been summed up by Mr. A. D. Lasker, Chairman of the Shipping Board, as follows in an address while this argument is going through the press:

"Neither the sacrifice of money nor the time of men could have resulted in the creation of so vast a fleet in so short a time had we not been willing to utterly disregard one prime factor in the manufacture of ships—to wit: *the peace-time value of the ships we created.*

"By this I mean that our whole effort was directed—and for war purposes, properly,—to the creation of the maximum tonnage in the shortest time,—anything that could carry men and goods, regardless of cost of construction and operation."

However, even under the conditions described by Mr. Lasker the cost of ships was far under the valuations fixed by the experts for Norway and the valuations claimed by the Norwegian claimants.

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[1] U. S. Counter-case, Appendix, page 316.

a. AVERAGE COST FOR CONTRACT SHIPS $201.17 PER DEADWEIGHT TON.

On page 458 of the Appendix to the Counter-case of the United States is a communication from H. S. Kimball, Vice President in Charge of Finance of the Emergency Fleet Corporation. This reported the cost of a contract steel cargo ship and a requisitioned steel cargo ship as follows:

	Number of ships.	D. W. T.
Contract steel cargo	1,120	7,579,495
Requisitioned steel cargo	300	1,929,739
Total	1,420	9,509,234

The average cost per deadweight ton, exclusive of Fleet Corporation Administrative expense, was shown as follows:

For Contract Ships	$199.42 per D. W. T.
For Requisitioned Ships	212.48 per D. W. T.

The average cost per D. W. T. for Cargo and Requisitioned ships taken together was $202.09.

Before the schedules supporting Mr. Kimball's figures were typed they were carefully checked to determine if all tonnages and individual costs had been stated correctly. This checking resulted in reducing the tonnage of contract ships from 7,579,495 to 7,570,095. This reduction in tonnage, plus certain errors in the original calculations served to increase the average cost of contract ships to $201.17 per D. W. T. Also, there was a slight change in the average cost of requisitioned ships, the revised figure being $1.09 per ton higher than originally reported. The costs as revised are shown as follows:

For contract ships	$201.17 per D. W. T.
For requisitioned ships	213.57 per D. W. T.
For contract and requisitioned ships together	203.69 per D. W. T.

The above figures are exclusive of administrative expense. If administrative expense is included the costs are shown as follows:

For contract ships	$203.32 per D. W. T.
For requisitioned ships	214.96 per D. W. T.
For contract and requisitioned ships together	205.68 per D. W. T.[1]

[1] See correspondence between the Agent of the United States and the Agent of Norway, covering data called for by the Agent of Norway explaining and supporting in detail the statement of the average cost of building ships, printed in the Appendix to the Counter-case of the United States, at page 458. This correspondence will be printed as a separate pamphlet.

These costs are not absolutely final, as there will be slight adjustments, which in some cases will reduce costs and in other cases result in an increase. The changes in the average cost resulting from readjustments, however, will be negligible. The sums involved are so vast that it requires a considerable adjustment either up or down to make any material change in the average. This is illustrated in the fact that $1,000.000 will make a difference of only about ten cents per d. w. t. in the average cost.

On certain requisitioned ships, notably those built by the Pusey and Jones company, it has not been possible to set up the final costs because of the delayed settlement. The final settlement with Pusey and Jones is expected to add to the costs now on the books a substantial amount for amortization and profit.

The costs as reported by the Fleet Corporation are fairly close to the reproduction cost figure sworn to by Frank S. Martin, the expert for Norway, when he testified in the Brooks-Scanlon case. In that case he testified that the reproduction cost of the "*M. J. Scanlon*" would have been from $210 to $215 per D. W. T.[1]

It is true that the cost of the Fleet Corporation was not the cost of contemporaneous reproduction because many of the ships were built long after the ships that were requisitioned on August 3rd. However, the cost of contemporaneous reproduction would have been much less if all of the ships had been built at the earlier date because the price of labor was not so great in the early stages of the construction program as later on.

It is good common sense to believe that no contract could have been worth $265 a ton or $300 per ton on August 3, 1917, if at that time the Fleet Corporation could go into the market and make contracts for similar ships at less than $160 a ton. That such contracts were made is shown by a report from Thomas D. Pitts, Assistant Manager, Department of Maintenance and Repair, Construction Division, United States Shipping Board, Emergency Fleet Corporation. Mr. Pitts reports as follows:

"Dear Sir: The Emergency Fleet Corporation made a number of lump sum contracts in 1917, before and after requisitioning, at prices approximating $155.00 per D. W. T. Among these contracts were the following:[2]

[1] U. S. Counter-case, Appendix, page 305.
[2] U. S. Counter-case, Appendix, page 467.

Contract		Name of Builder	No. of vessels	Type	D.W.T.	Price per DWT
No.	Date					
4 S. C.	5-13-17	Los Angeles S. B. Co.....	8	Cargo	8800	$162.60 1st 2 152.60 last 6
30 S. C.	7- 3-17	Downey S. B. Co.....	10	Cargo	7500	155.00
26 S. C.	6-30-17	Baltimore D. D. & S. B. Co.	8	Cargo	8800	158.00
48 S. C.	7-21-17	Western Pipe & Steel Co..	8	Cargo	8800	153.75
57 S. C.	8-11-17	Groton Iron Works.....	6	Cargo	8800	155.00
18 S. C.	6-19-17	Moore S. B. Co.....	10	Cargo	9400	159.81
63 S. C.	8-20-17	California S. B. Co.....	3	Cargo	6000	151.40

b. 176 SHIPS AT $191.18 PER TON FROM A SINGLE CONTRACTOR.

As indicative of values of contracts on August 3, 1917, and later, the United States Counter-case, Appendix, contains a statement concerning the ships built by the American Ship-Building Company on various contracts made in 1917 and 1918. In addition to building 38 requisitioned ships, the American Shipbuilding Company built 176 contract ships. Their average cost as reported by H. S. Kimball, Vice President in Charge of Finance of the Fleet Corporation, was $191.18 per deadweight ton.[1]

The price for the 176 ships as fixed in the settlement contract of October 4, 1919, was only $189.95, but changes and extras and incidental costs on the ships not then completed ran up the average cost on the 176 ships to $191.18.[2]

1. Shipbuilder Figured Net Costs at Only $155.81 Per Deadweight Ton.

The absurdity of the valuations claimed by the Norwegian claimants is emphasized by the figures given by the American Shipbuilding Company in its offer leading to the settlement of October 4, 1919. In this offer, dated September 25, 1919, the shipbuilder estimated his net costs for the 176 ships as built under specifications at only $108,100,112 which, divided by the tonnage—693,800 tons—gave a price of only $155.81 per D. W. T.

The difference between this net cost figure and the settlement figure was made up partly of depreciation, amortization, extraordi-

[1] U. S. Counter-case, Appendix, page 467.
[2] U. S. Counter-case, Appendix, page 416.

nary charges, and inventory adjustment, which the shipbuilder set up as follows:

(a) Amortization of plants extensions for war work, fixed in the present contract	$4,500,000
(b) Ordinary depreciation of normal pre-Fleet Corporation contract plant, provided for but not definitely fixed in the present contract, estimated	1,215,000
(c) Inventory adjustment, provided for but not definitely fixed in the present contract, estimated	470,000
(d) Extraordinary charges, being 1½% of the original contract price as adjusted. This item is provided for in the present contract and is fixed by the present contract	2,075,614
Total	$8,260,614

These charges amounted to $11.91 per ton. With changes and extras, profit and the construction cost the total price proposed by the shipbuilder in settlement was $191 per ton, which the shipbuilder summarized as follows:

$155.81 equals average net cost of ships built to original specifications.
7.00 equals average cost of extras.
16.28 equals estimated profit.
11.91 equals charges fixed by the October 24, 1918 contract above detailed.

$191.00 Total.[1]

c. COST UNDER CONTRACT OF AUGUST 20, 1917.

No contracts were made by the Fleet Corporation on August 3, 1917, but on August 20, the Fleet Corporation made a contract with the California Shipbuilding Company for the construction of 3 ships of 6,000 deadweight tons. The contract price was slightly over $150. per ton.

The contract is printed in full beginning on page 331 of the Appendix to the Counter-case of the United States. In order to show the cost under this contract after the addition of changes and extras and wage increases, the Fleet Corporation has reported figures as follows:

Cost of Hull 423	$195.51
Cost of Hull 424	207.21
Cost of Hull 425	204.96

Or an average cost for the three ships of $202.56.[2]

[1] U. S. Counter-case, Appendix, pages 413–415.
[2] U. S. Counter-case, Appendix, page 459.

An average cost of slightly over $200 per ton for 1120 cargo ships does not prove that ships were worth what they cost, but does prove that they could not have been worth more than their cost. One of the definitions given by Webster's dictionary for the word value is,

"concrete purchasing power; the specific quantity of another object for which a given object can be exchanged; a price which can be actually obtained."

In explaining this definition the dictionary says regarding value:

"It will usually be proportionate to the cost of production; because when the value of an article is above its cost producers will tend to increase the supply, while if its value is below its cost producers will tend to diminish the supply."

This law of supply and demand did not operate in the case of the ships built by the Emergency Fleet Corporation because they had to be constructed regardless of cost, and so long as the war was under way the production could not be diminished simply because the value was less than cost. It was well recognized at all times that the peace-time value of these ships would probably be much less than their cost. To the United States they were weapons of war, not implements of commerce.[1]

d. VALUATION OF THINGS ACTUALLY REQUISITIONED.

The United States in an earnest desire to ascertain proper values for the property which it actually requisitioned on August 3, 1917, employed Mr. Edwin C. Bennett, a consulting naval architect, engineer surveyor and appraiser, who has been connected with the shipbuilding industry for the past 31 years.

Mr. Bennett's qualifications as an expert are fully stated on pages 473 and 474 of the United States Counter-case.

Mr. Bennett has placed a valuation upon the property which was actually taken by the Fleet Corporation on August 3, 1917. He has expressed this valuation as being the interest of the owner in the contract on August 3, 1917.

Roughly speaking, Mr. Bennett, in his evaluations has followed the theory so clearly expressed by Mr. Edward B. Burling to the effect that all we requisitioned was a mass of wood and iron, and that the value of this wood and iron on August 3, 1917, would not be greater than the material of which it was composed and the labor that had gone into these materials.

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[1] See ante page 178.

1. The Force Majeure Clause.

Mr. Bennett calls particular attention to the fact that every contract contains a force majeure clause extending the contract delivery date for a period equivalent to the length of time that force majeure was operative. Under this clause even if there had been no frustration of the contracts they would have been postponed until such time as the Fleet Corporation released all control over the shipyard. Naturally no work under the contracts held by the Norwegian claimants would have been done until the Fleet Corporation's shipbuilding program was completed long after the war. On this theory the contracts might have been resumed long after the war and the ships completed. Mr. Bennett has not concerned himself with the value of completed ships because there were no completed ships involved. He has however considered the value of the material that should have been on hand at the time of the resumption of the contracts long after the war, and has considered that this was the interest and only interest the contractor had in the property that was requisitioned.

The United States respectfully submits as follows:

(a) That the sale prices of contracts should not be considered in determining just compensation for requisition because, as Mr. Burling has stated, no contracts were requisitioned.

(b) That the only value to be considered is the intrinsic value of the congeries of wood and iron which Mr. Burling has declared was the only thing requisitioned.

(c) That as Mr. Burling has stated there was obviously no market value for this congeries of wood and iron.

(d) That there being no market value it must be valued as work in process.

(e) That, as Mr. Burling has stated, at the most, the work in process would be worth no more than the materials of which it was composed and the labor spent upon these materials.

It is upon the above basis that the United States concedes the amount which in its judgment should be awarded as just compensation by this Tribunal.

IX. The Sick-Room Chart of the Fever Patient

The Norwegian Counter-case contains 66 pages of extracts from the British Shipping Journal "Fairplay." These extracts read like the nurse's notes on the sick-room chart of a fever patient.

The condition of shipping markets as depicted in these extracts demands the use of pathological terms to convey the picture properly. Nothing could better show the unnatural, factitious state of excitement accompanying the wild speculations in ship contracts. The record of this morbid, unhealthy condition in the shipping world is covered for a period of 6 years in the extracts printed in the Norwegian Counter-case.

The onset of the attack is marked by what might be likened to a heavy chill beginning in 1914. From that time for the 6 years covered by the Norwegian Counter-case, the patient's condition undergoes many fluctuations, sometimes up, sometimes down, reaching at one time the fever of delirium, and ending finally in collapse.

a. THE PREMONITORY CHILL IN 1914.

The patient's condition on January 8, 1914, is shown by the following extract among the first shown on the chart kept by the sick-room nurse, "Fairplay:"

"Take a 7,000-tonner to-day bought at, say, £7 per ton. It cannot be said in reason that the condition of freights in any way justified such a price, because even if this boat were valued at much less per ton it would take owners all their time to keep the capital intact and pay a 5-per-cent dividend. * * *

"*Does an ordinary 6,000 or 7,000-ton boat costing £7 per ton or over offer even reasonably safe security? The answer is, certainly not, for the present conditions of employment preclude any profit at all being made upon this value if any attempt is made to keep the capital safe, and, furthermore, a long continuance of unremunerative freights will tend to materially reduce the value.*"[1]

b. THE CHILL CONTINUES.

Condition in February, 1914. "The freight market is no better than a week ago, in fact, lower rates have been accepted, while employment is more difficult than ever to secure. * * * Never in the history of shipowning has there been such a relative dearth of homeward employment. The oldest owners and brokers can not remember a condition of the markets anything like so serious as it is at present."[2]

Condition in March, 1914. "There is no improvement to report in the condition of the freight market. * *"[3]

Condition in April, 1914. "The condition of the freight market has not improved with the advent of spring, * *"[3]

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[1] Norwegian Counter-case, Appendix, page 149. Italics ours.
[2] Norwegian Counter-case, pages 149–150.
[3] Norwegian Counter-case, Appendix, page 151.

Condition in May, 1914. "The condition of the freight market is still almost as bad as ever."[1]

Condition in June, 1914. "The condition of the freight market still continues to be more or less depressed in most homeward directions, * * *"[1]

Condition in July, 1914. "There is no improvement to report in the general condition of the freight market, * * *"[2]

Condition in August, 1914. "The freight market is at the time of writing still closed. * * *"[2]

Condition in September, 1914. "There is very little change to report in the condition of the freight market. Outward rates to most directions are ruinously low, while homeward business is difficult to find to much more than cover working expenses."[3]

c. THE FIRST RISE IN TEMPERATURE.

The first signs of the abatement of the chill and the beginning of the fever is shown in Fairplay's October reports.

Condition on October 15, 1914. "There are distinct indications that the freight market is going decidedly better. * * *"[4]

Condition in December, 1914. "Freights continue to improve in most directions; the rise however, in rates from the U. S. is now almost approaching a sensational level. * * *"[4]

Condition on December 24, 1914. "The past year has been an anxious one for shipbuilders. The year opened with prices moving downwards, and orders almost impossible to obtain except at figures which showed no profit, and might even result in a loss. * * *"[5]

d. UP AND DOWN CONDITIONS IN 1915, WITH PHENOMINAL RISE AT THE END.

It is not necessary to follow the many changes in conditions week by week as reported for 1915. It is shown that freight rates increased until June 1915, when the following entry is found:

"The freight market is again quieter all round, there being considerably less demand for tonnage in all directions both homewards as well as outwards."[6]

Condition in November, 1915. By November, 1915, the fever had well begun to rise, and on December 2, 1915, conditions are marked by the following entry:

"* * * Values of boats are still advancing, some extraordinary sales having again been effected."[7]

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[1] Norwegian Counter-case, Appendix, page 152.
[2] Norwegian Counter-case, Appendix, page 153.
[3] Norwegian Counter-case, Appendix, page 154.
[4] Norwegian Counter-case, Appendix, page 155.
[5] Norwegian Counter-case, Appendix, page 156.
[6] Norwegian Counter-case, Appendix, page 160.
[7] Norwegian Counter-case, Appendix, page 164.

Condition on December 30, 1915. "The Freight Market: * * * Freights have reached a level beyond all expectations, for no one ever imagined even six months ago that such rates as are now ruling would ever be obtainable. They are gigantic rates, * * * The price of boats has now reached a tremendous level. Boats which were selling, or had been contracted for at about £6 per ton deadweight, now command well over £16 to £18 per ton. * * *"[1]

e. CONDITIONS GRAVE AND SERIOUS AT THE BEGINNING OF 1916.

That the conditions recorded for 1914 and 1915 were unhealthy conditions and threatened to become more unhealthy, was fully recognized by Fairplay in its first issue of January 6, 1916. In that issue was the following report:

"*Never in our history has the advent of the New Year taken place under conditions so serious and grave as now exist.* This statement must not be misconstrued as being forlorn, discouraging, or even pessimistic, because almost the world-wide situation is one of anxiety and perplexity as to the effects of the continuance of the war, and also the position in which every trading country will ultimately be placed. * * * *The whole world will have to suffer for the economic condition of our country. Freights are booming, in fact there is no word now capable of adequately expressing the level that rates have reached.* * * * *Unfortunately there is not the slightest hope of the advance in freights being checked; on the contrary, before this war is over we may see them very much higher, for there is no telling to what extent force of circumstances may compel merchants and shippers to advance their rates.*"[2]

f. GRAPHIC CHART OF PATIENT'S CONDITION IN APRIL, 1916.

The nurse's notes for the preceding years were made into a graphic chart in the issues of April, 1916. This chart showed the fluctuations in the price of a new ready 7500 ton cargo steamer. Concerning this chart Fairplay says:

"When we compiled the diagram in the middle of December last the value of a 7,500-tonner was about £125,000. By the middle of January a new ready steamer of this size could have secured £150,000. Values have since fluctuated, but at the present time a free and ready new vessel of this size could not be secured for less than about £160,000."[3]

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[1] Norwegian Counter-case, Appendix, page 165.
[2] Norwegian Counter-case, Appendix, page 166. Italics ours.
[3] Norwegian Counter-case, Appendix, page 168.

The ups and downs of the freight market and ship market are shown in detail for the succeeding months. By December it was recorded that the

"Rates from the U. S. A. continue to soar, and in some cases have attained unprecedented figures. * *"[1]

g. THE RISE IN 1917.

"Freights, as a consequence of these things, have reached an abnormal price. * * *"[2]

Condition in May, 1917.—"Steamers building abroad are being sold at prices which would have been considered absolutely absurd three or four months ago. * * * and of an 8,600 to 8,800 tonner, building by the Chester Shipbuilding Co. for delivery January–February next, at $170 per ton. * * * Our Government is paying only £15 per ton for the standard boats building in this country."[3]

h. THE AUGUST 2ND DIAGNOSIS.

Fairplay was issued the first time in August on August 2nd, 1917, one day before the requisitioning by the Emergency Fleet Corporation. The diagnosis on that date is as follows:

"*American and Japanese tonnage stand at the present values because their steamers possess a scarcity value, and because their owners can run them practically free.* If they were forced to carry cargo for the benefit of all concerned at somewhere near our own blue book rates, *values would drop like a runaway lift; we should cease to hear of such a cynical absurdity as £60 or £70 per ton for a tramp steamer, which in normal times could be purchased at the tenth of the price;* and there would be no jarring note in the music of the Allied orchestra."[4]

Condition in January, 1918. "Since the commencement of the war things have changed. * * * Freights continued to rise, and the profits of shipowners increased until at the end of last year, £25 was considered to be the value of a new, ready steamer of 7,500 tons."[5]

i. THE END FORESEEN.

Condition in September 19, 1918. "Now that Mr. Lloyd George has declared that 'the worst is over,' shipowners are becoming more interested in the question as to how long shipping will continue to be remunerative after peace is declared. * * * Some of the more pessimistic foreshadow a general smash up of shipping when competition is in full force. They tell us that freights will be so low as to constitute a loss to shipowners in running their boats and

[1] Norwegian Counter-case, Appendix, page 172.
[2] Norwegian Counter-case, Appendix, page 175.
[3] Norwegian Counter-case, Appendix, page 177.
[4] Norwegian Counter-case, Appendix, page 182. Italics ours.
[5] Norwegian Counter-case, Appendix, page 186.

that when this occurs the values of shipping will be down to pre-war periods of depression."[1]

Condition in July, 1919. "*Condition and Future of Norwegian Shipping.* * * * *In 1918 the revenues were also good, although not so great as in 1916 and 1917, but, on the other hand, the expenses of shipping increased to a perilous degree, with the result that the net yield was considerably less.*

"*But not only did the receipts decrease and the direct outlays become greater, in various other ways the conditions of shipping became more difficult, and the trade had to face difficulties and dangers which may be fateful, although we have ground for hoping that these trials will be of a transitory kind, and that better and safer times will return.*"[2]

j. A RISE IN TEMPERATURE.

Condition in January, 1920. "The Freight Market. The value of tramp tonnage still continues to advance, astoundingly high prices being freely offered for old boats. Only the other day certain owners informed us that they had declined over £15 per ton deadweight for a boat of about 4,500 tons, of about twenty-three years of age."[3]

k. THE LAST DAYS BEFORE THE END.

Condition in March, 1920. "The freight market is very dull all round and indications everywhere point to a diminution of ship-owner's profits, so much so that some owners are of opinion that we are not very far off such conditions of trade as will preclude the possibility of many boats making a profit at all."[4]

Condition on April 8, 1920. "The freight market. The position of shipping becomes worse."[4]

Condition on April 15, 1920. "The Freight Market. The condition of tramp shipping, as time goes on, is becoming more and more unsatisfactory, *and, in our opinion, the present high level of values of tramp boats cannot be kept propped up much longer.*"[4]

Condition in June, 1920. "*The freight market is lower all round, In some markets the demand has almost 'dried up,' only an occasional order for a boat coming forward.*"[5]

Condition on July 1, 1920. "Freights continue slowly to recede. * * * The position of the market today is, however, exactly what anyone who understood it knew that it must be, and certainly today there are no signs of hope of immediate improvement."[5]

Condition on July 15, 1920. "Shipping values today are on the down grade because among other reasons, the available supply is at the moment greater than the demand; * *

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[1] Norwegian Counter-case, Appendix, pages 193–194.
[2] Norwegian Counter-case, Appendix, page 202. Italics ours.
[3] Norwegian Counter-case, Appendix, page 207.
[4] Norwegian Counter-case, Appendix, page 208. Italics ours.
[5] Norwegian Counter-case, Appendix, page 209. Italics ours.

"The outlook in the freight market is day by day becoming worse."[1]

Condition on August 12, 1920. "The freight market shows no sign of improvement. On the contrary conditions are getting worse * *"[2]

l. REVIVED BY STIMULANTS.

Condition on October 14, 1920. "The freight market has a rather better appearance, being stimulated by a resumption of coal chartering from Wales. * * *

"The Norwegian Shipping News. * * * The local society of shipowners here recently had its first autumn meeting. The acting chairman, Mr. Arth. H. Mathiesen, in a speech of welcome to the members, gave his views on the outlook of Norwegian shipping. He commenced by stating that during the summer the freights in the trades in which Norwegian ships were especially employed had fallen about 50 percent."[3]

Condition in November, 1920. "There is but little change to report in the condition of the freight market. * *"[4]

Conditions on December 2, 1920. "Since our last report the freight *market has gone from bad to worse; in fact, most homeward markets have collapsed, so that many owners find themselves in the uncomfortable position of having to accept any freight obtainable, and so cut their losses.* * * *"[4]

Condition on December 9, 1920. "Since our last report the condition *of the freight market has become even more grave, for nearly all business now effected must show a loss.*"[5]

Condition on December 16, 1920. "The condition of the freight *market is very bad.*"[5]

m. THE FINAL COLLAPSE.

Condition on December 23, 1920. "The collapse of the freight *market has come*, and its severity will unfortunately be a staggering blow to many shipowners, but more especially to those new Companies which have come into existence during the last year or two."[5]

Thus ends the record as printed in the Norwegian Counter-case. It is a record which does not prove high values in any stable sense. As substantiating the values claimed, the extracts printed in the Norwegian Counter-case have the same weight as the recorded ravings of a delirious patient might have in any court.

X. Values as Measured by a Cool-Headed Nation.

On July 15, 1920, Fairplay issued a graphic chart showing the fluctuations in price of a new ready 7,500 ton cargo steamer. In com-

[1] Norwegian Counter-case, Appendix, page 210.
[2] Norwegian Counter-case, Appendix, page 211.
[3] Norwegian Counter-case, Appendix, pages 212–213.
[4] Norwegian Counter-case, Appendix, page 213. Italics ours.
[5] Norwegian Counter-case, Appendix, page 214. Italics ours.

menting upon this chart it made the statement that the highest price paid for a new ready British 7,500 ton steamer during hostilities was about £25 per ton.

The United States has offered in evidence before this Tribunal photostatic copies of a similar graphic chart prepared by Fairplay. It covers the prices between the last quarter of 1898 up to the end of 1920. It is a record of values as measured by a cool-headed nation that did not allow itself to run wild with the momentary values of the speculative market, or permit irresponsible and unlimited profiteering in freight rates. For the convenience of the court the prices shown on this chart are here converted into dollars at the rate of exchange which was maintained in 1917. The chart shows prices at varying periods as follows:

Jan. 1, 1917, $119.27 per ton, d. w.
Apr. 1, 1917, $119.11 " " "
July 1, 1917, $114.34 " " "
Aug. 3, 1917, $113.07 " " "

This chart relates to British steamers.

Even if twice as much could have been obtained for Norwegian or other neutral tonnage not subject to the same restrictions as to freight which governed the English ships, the maximum for such tonnage on August 3, 1917, would have been $226.14 per d. w. ton.

It must be remembered that on August 3, 1917, when the British prices ranged as high as $113.07 per ton that the British government was buying ships and building ships under the duress of desperate necessity. Even under such circumstances the British people kept their heads and did not indulge in any of the abnormal speculative valuations claimed by the Norwegians.

a. THE TRUE SIGNIFICANCE OF THE CHART.

However the true significance of the chart is not in the values it shows at any given time, but in the proof that it gives of the fact that artificial values of the moment can not be maintained, and therefore should not be regarded as standards of value. For instance, in January, 1920, to the end of the year 1920, there is almost a sheer drop from approximately £259,000 to £60,000.

Unfortunately the record ends with 1920 so far as the chart is concerned. However, the United States, in the documentary evidence attached to its Counter-case has supplied further facts which will

enable the court to continue the almost vertical drop on the chart. Prices for the third quarter of 1921 as compiled from Lloyds' lists averaged $22. per d. w. ton.

Prices for the fourth quarter of 1921 averaged $21. per d. w. ton; prices for the first quarter of 1922 averaged $23.70 per d. w. ton. These prices are taken from the files of the Statistical Division, Department of Ship Sales, Emergency Fleet Corporation.[1]

b. FORMER OWNERS SAVED BY REQUISITION FROM RUINOUS LOSS.

The record points inevitably to two striking facts:

1. That in the first place, even if there had been no requisition by the United States Government, at least 9 of the ships involved in the Christiania claims could never have been delivered.

2. That even if all of the 15 ships could have been obtained by the former owners they would have been delivered at a time when even the false and artificial values prevailing for a short period could not have been enjoyed and they would be on the hands of their owners with a value of about one-tenth their cost. As early as July, 1919, Fairplay in its review of the condition of the future of Norwegian shipping called attention to the fact that the expenses of shipping had increased to a perilous degree and that the condition of shipping had become more difficult as the trade had to face difficulties and dangers which might be fateful, although it was then hoped that these trials would be of a transitory kind and better and safer times would return. That review was written in July, 1919, but it referred as well to conditions in 1918. With very few exceptions, all of the 15 ships involved in the Christiania claims were contracted for for very late delivery, one as late as March, 1919. It certainly cannot be claimed by the Norwegians that these ships would have been delivered early enough to enjoy profits that would have netted a sufficient amount to amortize the enormous difference between cost and ultimate value.

XI. Conclusions.

The United States respectfully submits that Mr. Burling's opinion was correct when it was written on August 26, 1918, and that it is still correct. It is not only correct but comprehensive. It might well

[1] U. S. Counter-case, Appendix, page 457.

have been written to cover the differences that prevail in this court today on the subject of value. It answers all the questions, and shows that:

(a) The thing to be valued is the thing that was taken.

(b) The thing that was taken was a mass of wood and iron.

(c) The thing that was taken had no market value, but only its intrinsic worth.

(d) Neither reimbursement nor the market value of the contracts in Norway has any relation to the value of the things taken, because contracts were not requisitioned, and the thing which we took was not the thing for which market values were established and money paid.

(e) The things not to be valued were ships or contracts for ships.

(f) The value of the thing taken was at most no more than the cost of materials of which it was composed and the labor spent upon such materials.

F. THE FIFTEEN CLAIMS.—GENERAL INTRODUCTION.

I. Almost 80% of the Total Amount Claimed by Norway Represents Resale Profits in Speculative Transactions.

The total amount claimed by the Kingdom of Norway is $16,403,-659.51. This total should be divided as follows:

Amount claimed on account of resale profits in speculative transfers of contracts		$9, 272, 446. 92
Interest at 7% compounded semi-annually, on amount resale profits claimed		3, 761, 983. 78
Total claimed on the purely speculative feature of transactions		13, 034, 430. 70
Amount claimed on account of payments to shipbuilders	$2, 396, 835. 00	
Interest at 7% compounded semi-annually on payments to shipbuilders	972, 393. 81	
Total claimed on account of payments to shipbuilders		3, 369, 228. 81
Total claimed on all accounts		16, 403, 659. 51

Almost 80% of the total claim is on account of resale profits allegedly paid in that kind of speculative ventures which the Supreme Court of Norway has so fittingly described as the "Purchase of a Chance."

This lottery term is not supplied by the United States to characterize the transactions leading up to the claims. It is the language of the highest court in the Kingdom of Norway, and was used to describe the character of a contract speculation which in all essentials was precisely the same as the fifteen ventures which have resulted in this Arbitration.[1]

The United States is asked to pay $13.034,430.70 to indemnify the claimants on account of resale profits which they claim to have paid in the purchases of the "chances" they bought. This demand for an indemnity against speculative losses has no legitimate place

[1] See Judgment of Supreme Court in Bestum II Case. U. S. Counter-case, Appendix, page 402.

in any discussion of just compensation for property requisitioned on August 3, 1917.

Every penny paid out by the claimants was paid in transactions that occurred after August 3, 1917, and with the full knowledge by all the parties concerned that the ships involved had already been requisitioned by the United States.

II. The relevancy of Hannevig.

> "The learned agent for the United States then turns to the Christiania group which at once becomes merged in the image of Christopher Hannevig—although less than one fourth of the amount claimed is based upon contracts with companies controlled or in any way concerned with Mr. Hannevig."[1]
>
> "One would hardly gather from reading these twenty-nine pages that three-quarters of the amount claimed by the Christiania Group is claimed on account of contracts which have not the remotest connection with Mr. Hannevig's shipyards and their inter-company contracts. Out of the total of $16,403,659.51, the sum of $12,545,934.16 was claimed for the requisitioning of contracts made with the Manitowoc Shipbuilding Company, the Seattle Construction and Dry Dock Company, the Skinner and Eddy Corporation, and the Northwest Steel Company—companies situated thousands of miles from the scenes of Mr. Hannevig's activities and in which he never possessed the smallest interest.[2]
>
> "A large part of the material produced by the United States does not bear upon any of the issues * * * save as an apparent attempt to disparage individual Norwegian citizens can be said to do so."[3]

By the above passages and others, the Norwegian Counter-case apparently endeavors to create the impression without making the direct statement that Christopher Hannevig had no interest at any time in claims totaling three-fourths or $12,545,934.16 of the $16,403,659.51 claimed by Norway in this arbitration. The effort is furthermore made to persuade the tribunal that the entire discussion on Mr. Hannevig and his activities is wholly irrelevant to the issues before the Tribunal and is simply an effort on the part of the United

[1] Norwegian Counter-case, page 14.
[2] Norwegian Counter-case, page 80.
[3] Norwegian counter-case, page 1.

States by miscellaneous disparagement of "individual Norwegian citizens"[1] "to create prejudice by the introduction of irrelevant insinuation."[2]

The United States cheerfully accepts the issues thus tendered.

The United States maintains first, that Mr. Hannevig was very much "concerned" with each and every one of these claims and second, that his relation to the claim was of real importance in every instance.

Whether or not Mr. Hannevig was concerned in these claims is not a matter of opinion but of fact, as shown by the record and to that record the United States appeals. There is submitted herewith a chronological statement which makes no pretension of being complete, showing Mr. Hannevig's connection with each of the fifteen claims, commencing with number one:

a. HANNEVIG VERY MUCH "CONCERNED" WITH THESE CLAIMS.

Claim No. 1, $1,028,220.24.

(a) Hannevig originally contracted August 1, 1916, with Manitowoc Shipbuilding Company.[3]

(b) Hannevig August 1, 1916, made separate brokerage commission contract.[4]

(c) Hannevig sold contract September 8, 1916, to Hans Madsden.[5]

(d) Hannevig on August 21, November 9, and November 30, 1916, made progress payments of $28,000 each.[6]

(e) Hannevig, A/S, bought contract March 20, 1917, from Hans Madsen.[5]

(f) Hannevig bought contract March 26, 1917, from Hannevig, A/S.[5]

(g) Hannevig, Inc., advised Shipping Board August 22, 1917, that Hannevig held this contract.[7]

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[1] Norwegian Counter-case page 1.
[2] Norwegian Counter-case pages 18, 19, 21, 22, 79, 81, etc.
[3] U. S. Case, Appendix, page 591.
[4] U. S. Case, Appendix, page 596.
[5] Norwegian Case, page 162.
[6] U. S. Case, Appendix, page 370.
[7] U. S. Case, Appendix, page 368.

(h) Hannevig was recognized on September 1, 1917, by shipbuilder as the "present owner."[8]

(i) Hannevig's representative, Bullowa, was notified on September 4, 1917, of the requisition.[9]

(j) Hannevig sold contract September 12, 1917, to Peder Lindoe.[10]

(k) Hannevig bought contract September 18, 1917, from Peder Lindoe.[11]

(l) Hannevig, A/S, and K. Th. Einersen issue prospectus September 20, 1917 as promoters of Manitowoc Shipping Corporation, present claimant.[12]

(m) Hannevig sold contract September 21, 1917, to Manitowoc Shipping Corporation, present claimant.[13].

(n) Hannevig, A/S, by Sven Bjork, signed September 21, 1917, "receipt for purchase price of contract," from K. Th. Einersen.[14]

(o) Hannevig, A/S's, promoted company, Manitowoc Shipping Corporation, present claimant, was organized October 16, 1917.[15]

(p) Hannevig's lieutenant, Sven Bjork, was made director of Manitowoc Shipping Corporation, present claimant.[16]

(q) Hannevig's operating company, Baltimore & South American Navigation Company, concluded agreement with Manitowoc Shipping Corporation, present claimant.[17]

(r) Hannevig was a guarantor upon the sale of the contract to Manitowoc Shipping Corporation, present claimant.[18]

(s) Hannevig received authority May 6, 1918, to represent Manitowoc Shipping Corporation, present claimant, in negotiation with the Shipping Board.[19]

(t) Hannevig represented Manitowoc Shipping Corporation, present claimant, on May 8, 1918 [20], and subsequently, in negotiation with the Shipping Board.

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[8] U. S. Case, Appendix, page 376.
[9] U. S. Case, Appendix, page 372.
[10] Norwegian Case, page 162.
[11] Norwegian Case, page 162.
[12] Norwegian Case, Documentary Evidence, page 162.
[13] Norwegian Case, Documentary Evidence, page 175.
[14] Norwegian Case, Documentary Evidence, page 176.
[15] U. S. Counter-case, Appendix, page 351.
[16] U. S. Counter-case, Appendix, page 346.
[17] U. S. Counter-case, Appendix, page 351.
[18] U. S. Counter-case, Appendix, page 352.
[19] U. S. Counter-case, Appendix, pages 8-9.
[20] U. S. Case, Appendix, page 150.

(u) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Manitowoc Shipping Corporation was included in this group.[21]

(v) Hannevig, Inc., obtained March 6, 1919, "receipt by shipyard for installments paid" from Manitowoc Shipbuilding Company, for use in the Norwegian case.[22]

(w) Hannevig and Manitowoc Shipbuilding Company on May 14, 1919, made release regarding brokerage commission.[23]

Claim No. 2, $1,028,220.24.

(a) Hannevig originally contracted August 1, 1916, with Manitowoc Shipbuilding Company.[1]

(b) Hannevig August 1, 1916, made separate brokerage commission contract.[2]

(c) Hannevig sold contract September 8, 1916, to Hans Madsen.[3]

(d) Hannevig on August 21, November 9, and November 30, 1916, made progress payments of $28,000. each.[4]

(e) Hannevig, A/S, bought contract March 20, 1917, from Hans Madsen.[5]

(f) Hannevig bought contract March 26, 1917, from Hannevig, A/S.[6]

(g) Hannevig, Inc., advised Shipping Board August 22, 1917, that Hannevig held this contract.[7]

(h) Hannevig was recognized on September 1, 1917, by shipbuilder as the "present owner."[8]

(i) Hannevig's representative, Bullowa, was notified on September 4, 1917, of the requisition.[9]

(j) Hannevig sold contract September 12, 1917, to Peder Lindoe.[10]

(k) Hannevig bought contract September 18, 1917, from Peder Lindoe.[11]

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[21] Norwegian Counter-case, pages 18–19.
[22] Norwegian Case, Documentary Evidence, page 175.
[23] U. S. Case, Appendix, pages 392–394.
[1] U. S. Case, Appendix, page 597.
[2] U. S. Case, Appendix, page 596.
[3] Norwegian Case, page 164.
[4] U. S. Case, Appendix, page 370.
[5] Norwegian Case, page 164.
[6] Norwegian Case, page 164.
[7] U. S. Case, Appendix, page 368.
[8] U. S. Case, Appendix, page 376.
[9] U. S. Case, Appendix, page 372.
[10] Norwegian Case, page 164.
[11] Norwegian Case, page 164.

(l) Hannevig sold contract September 21, 1917, to Manitowoc Shipping Corporation, present claimant.[12]

(m) Hannevig, A/S and K. Th. Einersen issue prospectus September 20, 1917 as promoters of Manitowoc Shipping Corporation, present claimant.[13]

(n) Hannevig, A/S, by Sven Bjork, signed September 21, 1917, "receipt for purchase price of contract" from K. Th. Einersen.[14]

(o) Hannevig, A/S's, promoted company, Manitowoc Shipping Corporation, present claimant, was organized October 16, 1917.[15]

(p) Hannevig's lieutenant, Sven Bjork, was made director of Manitowoc Shipping Corporation, present claimant.[16]

(q) Hannevig's operating company, Baltimore & South American Navigation Company, concluded agreement with Manitowoc Shipping Corporation, present claimant.[17]

(r) Hannevig was a guarantor upon the sale of the contract to Manitowoc Shipping Corporation, present claimant.[18]

(s) Hannevig received authority May 6, 1918, to represent Manitowoc Shipping Corporation, present claimant, in negotiation with the Shipping Board.[19]

(t) Hannevig represented Manitowoc Shipping Corporation, present claimant, on May 8, 1918,[20] and subsequently, in negotiation with the Shipping Board.

(u) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Manitowoc Shipping Corporation was included in this group.[21]

(v) Hannevig, Inc., obtained March 6, 1919, "receipt by shipyard for installments paid" from Manitowoc Shipbuilding Company, for use in the Norwegian case.[22]

(w) Hannevig and Manitowoc Shipbuilding Company on May 14, 1919, made release regarding brokerage commission.[23]

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[12] Norwegian Case, Documentary Evidence, page 175.
[13] Norwegian Case, Documentary Evidence, page 162.
[14] Norwegian Case, Documentary Evidence, page 176.
[15] U. S. Counter-case, Appendix, page 351.
[16] U. S. Counter-case, Appendix, page 346.
[17] U. S. Counter-case, Appendix, page 351.
[18] U. S. Counter-case, Appendix, page 352.
[19] U. S. Counter-case, Appendix, pages 8–9.
[20] U. S. Case, Appendix, page 150.
[21] Norwegian Counter-case, pages 18–19.
[22] Norwegian Case, Documentary Evidence, page 175.
[23] U. S. Case, Appendix, pages 392–394.

Claim No. 3, $2,120,679.93.

(a) Hannevig was assignee from S. O. Stray & Co., September 18, 1917, as shown by endorsement on contract.[1]

(b) Hannevig endorsed contract to his "operating company," Baltimore & South American Navigation Company, as shown by contract.[2]

(c) Hannevig, A/S, was broker on alleged assignment September 18, 1917, S. O. Stray & Co. to Baltimore Steamship Company, present claimant.[3]

(d) Hannevig, A/S, Jens Bing, H. Folkestad, and Birger Lie issued prospectus September 18, 1917, as promoters of Baltimore Steamship Company, present claimant, although Hannevig, A/S,'s signature is omitted or deleted from the Norwegian evidence.[4]

(e) Hannevig, A/S's promoted company, Baltimore Steamship Company, present claimant, was organized October 12, 1917.[5]

(f) Hannevig's lieutenant, Sven Bjork, was made director of Baltimore Steamship Company, present claimant.[6]

(g) Hannevig's associate and co-director (in Sorlandske Lloyd, Claimant 5 and 12), Karl A. Thorbjornsen, was made director of Baltimore Steamship Company, present claimant.[7]

(h) Hannevig's "operating company," Baltimore & South American Navigation Company, concluded agreement with Baltimore Steamship Company, present claimant.[8]

(i) Hannevig represented Baltimore Steamship Company, present claimant, on May 8, 1918,[9] and subsequently, in negotiation with the Shipping Board.

(j) Hannevig's attorney, Ralph J. M. Bullowa, sought information June 18, 1918, regarding date of requisition.[10]

(k) Hannevig's promoted company, Baltimore Steamship Company, the present claimant, and S. O. Stray & Co., owner of the con-

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[1] Norwegian Case, Documentary Evidence, page 184.
[2] Norwegian Case, Documentary Evidence, page 184.
[3] Norwegian Case, Documentary Evidence, page 185.
[4] Norwegian Case, Documentary Evidence, pages 179–180. U. S. Counter-case, Appendix, pages 352–353.
[5] U. S. Counter-case, Appendix, page 352.
[6] U. S. Counter-case, Appendix, page 352.
[7] U. S. Counter-case, Appendix, page 352.
[8] U. S. Counter-case, Appendix, page 353.
[9] U. S. Case, Appendix, page 150.
[10] U. S. Case, Appendix, page 442.

tract August 3, 1917, executed on January 6, 1919, joint power of attorney for negotiation with the Shipping Board.[11]

(l) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Baltimore Steamship Company was included in this group.[12]

(m) Hannevig authorizes Den Norske Handeslbank April 14, 1919, to delete his endorsement to his "operating company," Baltimore & South American Navigation Company, shown (b) above.[13]

(n) Hannevig explained the history of the assignments August 22, 1919, and disclaimed ownership at any time, stating that assignment set forth in (a) above was "an error."[14]

Claim No. 4, $2,731,749.47.

(a) Hannevig, A/S, bought contract September 20, 1917, from K. P. Nordgreen.[1]

(b) Hannevig, A/S, sold contract September 25, 1917. to Vard II Steamship Company.[2]

(c) Hannevig, A/S, G. O. Aarvold, Jac. Jacobsen, and Oscar Rod, issued prospectus September 25, 1917, as promoters of Vard II Steamship Company, present claimant.[3]

(d) Hannevig, A/S, by Sven Bjork, signed, September 27, 1917, receipt for purchase amount Kr. 6,219,756.00 and "1% guarantee commission" Kr. 62,197.56.[4]

(e) Hannevig, Aarvold, Jacobsen and Rod had a "joint account" which on September 27, 1917, was charged with the purchase amount and the guarantee commission, Kr. 6,281,953.56.[5]

(f) Hannevig, A/S, 's promoted company, Vard II Steamship Company, present claimant, was organized October 18, 1917.[6]

(g) Hannevig's lieutenant, Sven Bjork, was made director of Vard II Steamship Company, present claimant.[7]

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[11] Norwegian Case, Documentary Evidence, pages 186–187.
[12] Norwegian Counter-case, pages 18–19.
[13] Norwegian Case, Documentary Evidence, pages 184–185.
[14] Norwegian Case, Documentary Evidence, pages 185–186.
[1] Norwegian Case, page 166.
[2] Norwegian Case, page 166.
[3] Norwegian Case, Documentary Evidence, pages 194–195.
[4] Norwegian Case, Documentary Evidence, pages 202–203.
[5] Norwegian Case, Documentary Evidence, page 202.
[6] U. S. Counter-case, Appendix, page 353.
[7] U. S. Counter-case, Appendix, page 353.

(h) Hannevig represented Vard II Steamship Company, present claimant, on May 8, 1918,[8] and subsequently, in negotiating with the Shipping Board.

(i) Hannevig's name was selected by claimants "early in 1919" to designate the "Hanevig Group," and the claim of the Vard II Steamship Company was included in this group.[9]

(j) Hannevig, A/S, by Sven Bjork, and K. S. Nordgreen, owner of the contract August 3, 1917, executed joint power of attorney on February 15, 1919, authorizing executive committee of the "Hannevig Group" to settle claim against the United States.[10]

(k) Hannevig, A/S, by Sven Bjork, and Hannevig's promoted company, Vard II Steamship Company, executed joint power of attorney on February 21, 1919, authorizing executive committee of the "Hannevig Group" to settle claim against the United States.[11]

Claim No. 5, $2,273,753.21.

(a) Hannevig was a director of the Sorlandske Lloyd Company, present claimant, although Karl A. Thorbjornsen fails to say so when naming and eulogizing the directors in the Norwegian Case.[1]

(b) Hannevig's associate and co-director, Karl A. Thorbjornsen, was and is manager of Sorlandske Lloyd Company, present claimant.[2]

(c) Hannevig's associate in other Christiania Group transactions, Harry Borthen, was director of Sorlandske Lloyd Company, present claimant.[3]

(d) Hannevig, Inc., informed the shipbuilding company that Hannevig owned the contract, according to the company's letter of October 8, 1917.[4]

(e) Hannevig was notified on October 16, 1917, of the requisition.[5]

(f) Hannevig's attorney, R. J. M. Bullowa, was notified on October 16, 1917, of the requisition.[6]

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[8] U. S. Case, Appendix, page 149.
[9] Norwegian Counter-case, pages 18–19.
[10] U. S. Case, Appendix, page 682.
[1] Norwegian Case, page 205. U. S. Counter-case, Appendix, pages 349–350. U. S. Counter-case, page 22.
[2] Norwegian Case, page 205.
[3] Norwegian Case, page 205. U. S. Counter-case, Appendix, pages 349–350.
[4] U. S. Case, Appendix, page 468–469.
[5] U. S. Case, Appendix, pages 469–471.
[6] U. S. Case, Appendix, pages 472–474.

(g) Hannevig's attorney, Bullowa, stated November 28, 1917, that Hannevig's "understanding" was that vessel was owned by Sorlandske Lloyd, present claimant.[7]

(h) Hannevig, A/S, stated December 5, 1917, that Hannevig's "operating company," Baltimore & South American Navigation Corporation, had "taken over this steamer."[8]

(i) Hannevig's operating company, Baltimore & South American Navigation Corporation, was reported on December 12, 1917, as owner of hull, by American Consul at Christiania, Norway.[9]

(j) Hannevig's operating company, Baltimore & South American Navigation Corporation, on January 11, 1918, claimed ownership of the contract, through assignment in September, 1917, from Sorlandske Lloyd Company, of which Mr. Hannevig was a director.[10]

(k) Hannevig's operating company, Baltimore & South American Navigation Corporation, on January 17, 1918, stated that it was obtaining a copy of the assignment agreement under which it claimed ownership.[11]

(l) Hannevig, Inc. received cable from Norway referring to Sorlandske Lloyd Company, claimant company, as being located on same floor with and as part of the staff of Hannevig's Norwegian office.[12]

(m) Hannevig represented Sorlandske Lloyd Company, present claimant, on May 8, 1918,[13] and subsequently, in negotiating with the Shipping Board.

(n) Hannevig, A/S, cabled Hannevig August 1, 1918, regarding "legal steps" being taken against Ringen, assignor of contract.[1]

(o) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Sorlandske Lloyd Company was included in this group.[2]

(p) Hannevig, Inc., on October 17, 1919, obtained "receipt for installment payments," from Skinner & Eddy Company, for use in the Norwegian case.[3]

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[7] U. S. Counter-case, Appendix, page 39.
[8] U. S. Case, Appendix, page 482.
[9] U. S. Case, Appendix, page 483.
[10] U. S. Case, Appendix, page 483.
[11] U. S. Counter-case, Appendix, page 40.
[12] U. S. Counter-case, Appendix, page 9.
[13] U. S. Case, Appendix, page 149.
[1] U. S. Counter-case, Appendix, page 11.
[2] Norwegian Counter-case, pages 18–19.
[3] Norwegian Case, Documentary Evidence, page 211.

Claim No. 6, $3,363,311.07.

(a) Hannevig, A/S, bought contract September 17, 1917, from Lott Steamship Company.[4]

(b) Hannevig, A/S, sold contract September 17, 1917, to Ostlandet Steamship Company, present claimant.[5]

(c) Hannevig's associate in other Christiania Group transactions, Harry Borthen, was director and promoter of Ostlandet Steamship Company, present claimant.[6]

(d) Hannevig's associate in other Christiania Group transactions, Tryggve Sagen, was director and manager of Ostlandet Steamship Company, present claimant.[7]

(e) Hannevig, A/S, received on September 25, 1917, $88,000 for the assignment of the contract.[8]

(f) Hannevig given instructions in telegram from Tryggve Sagen to Captain Meidell, regarding Hull No. 2.[9]

(g) Hannevig represented Ostlandet Steamship Company, present claimant, on May 8, 1918,[10] and subsequently in negotiation with the Shipping Board.

(i) Hannevig represented Tryggve Sagen, Manager of Ostlandet Steamship Company, present claimant, on July 1, 1918, regarding this claim.[11]

(j) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Ostlandet Steamship Company was included in this group.[12]

Claim No. 7, $209,850.03.

(a) Hannevig's shipbuilding company, Pusey & Jones, on June 12, 1917, contracted to build Hull 1010, for Hannevig's dummy company, Bulk Oil Transports, Inc.[13]

(b) Hannevig's dummy company, Bulk Oil Transports, Inc., on June 12, 1917, contracted to buy of Hull 1010, building at Hannevig's shipbuilding company, Pusey & Jones.[13]

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[4] Norwegian Case, page 168.
[5] Norwegian Case, page 168.
[6] Norwegian Case, page 209. U. S. Counter-case, Appendix, page 349.
[7] Norwegian Case, page 209. U. S. Counter-case, Appendix, page 349.
[8] Norwegian Case, Documentary Evidence, page 234.
[9] U. S. Counter-case, Appendix, page 43.
[10] U. S. Case, Appendix, page 149.
[11] U. S. Case, Appendix, page 531.
[12] Norwegian Counter-case, pages 18–19.
[13] Norwegian Case, page 169.

(c) Hannevig's dummy company, Bulk Oil Transports, Inc., was notified on August 20, 1917, of the requisition.[3]

(d) Hannevig's dummy company, Bulk Oil Transports, Inc., signed assignment of contract on September 10, 1917, to Jacob Prebensen, Jr., a nominal consideration being stated.[4]

(e) Hannevig, Inc., on September 12, 1917, received $365,400.00 from the National City Bank of New York.[5]

(f) Hannevig's *alter ego*, Bullowa, as president of Hannevig's dummy company, Bulk Oil Transports, Inc., acknowledged on October 2, 1917, the assignment of September 10, 1917, to Jacob Prebensen, Jr.[6]

(g) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of Jacob Prebensen, Jr. was included in this group.[7]

(h) Hannevig, or one of his agents, made a "mistake" in the contract price, stated in the Hannevig inter-company contract, by which the claimant made an overpayment of $195,750.00 to the Hannevig dummy company, assignor.[8]

(i) Hannevig, or one of his agents, made a "mistake" in the amount of the installment paid the Hannevig shipbuilding company, as provided in the Hannevig inter-company contract, by which the claimant made a further "overpayment" of $20,662.50 to the Hannevig dummy company, assignor.[9]

Claim No. 8, $361,745.30.

(a) Hannevig's shipbuilding company, Pusey & Jones, on June 12, 1917, contracted to build Hull 1011 for Hannevig's dummy company, Bulk Oil Transports, Inc.[9]

(b) Hannevig's dummy company, Bulk Oil Transports, Inc., on June 12, 1917, contracted to buy Hull 1011, building at Hannevig's shipbuilding company, Pusey & Jones Co.[9]

(c) Hannevig's dummy company, Bulk Oil Transports, Inc., was notified on August 20, 1917, of the requisition.[3]

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[3] U. S. Case, Appendix, pages 221–222.
[4] Norwegian Case, Documentary Evidence, page 248.
[5] Norwegian Counter-case, Appendix, page 241.
[6] Norwegian Case, Documentary Evidence, page 248.
[7] Norwegian Counter-case, page 18–19.
[8] Norwegian Case, pages 215–216.
[9] Norwegian Case, page 170.

(d) Hannevig, A/S wrote C. K. Christofferson, Manager of Tromp Steamship Company, claimant company, on September 5, 1917, acknowledging offer to buy the contract.[4]

(e) Hannevig, A/S, gave a bank guarantee to return the purchase money if ship was not delivered in two years, or to make up any difference between the purchase price and the just compensation to be paid by the United States.[5]

(f) Hannevig A/S, is said to have received $474,150.00 on September 25, 1917, through Den Norske Handelsbank from Drammens Privat bank.[6]

(g) Hannevig's dummy company, Bulk Oil Transports, Inc., signed an assignment of contract on September 29, 1917, to A/S Tromp, a consideration of $474,150.00 being stated.[7]

(h) Hannevig's *alter ego*, Bullowa, as president of Hannevig's dummy company, Bulk Oil Transports, Inc., acknowledged on October 2, 1917, the assignment of September 29, 1917, to A/S Tromp, present claimant.[8]

(i) Hannevig's name was selected by claimant "early in 1919" to designate the "Hannevig Group," and the claim of the Tromp Steamship Company, was included in this group.[9]

(j) Hannevig was informed on June 24, 1919, that the Tromp Steamship Company elected to hold him and Den Norske Handelsbank on the bank guaranty.[10]

(k) Hannevig, or one of his agents, made a "mistake" in the contract price, stated in the Hannevig inter-company contract, by which the claimant made an overpayment of $195,750.00 to the Hannevig dummy company, assignor.[11]

(l) Hannevig, or one of his agents, made a "mistake" in the amount of the installment paid the Hannevig shipbuilding company, as provided in the Hannevig inter-company contract, by which the claimant made a further "overpayment" of $20,662.50, to the Hannevig dummy company, assignor.[12]

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[4] U. S. Counter-case, Appendix, page 392.
[5] U. S. Counter-case, Appendix, page 392.
[6] Norwegian Case, Documentary Evidence, pages 254–255.
[7] Norwegian Case, Documentary Evidence, page 254.
[8] Norwegian Case, Documentary Evidence, page 254.
[9] Norwegian Counter-case, pages 18–19.
[10] U. S. Counter-case, Appendix, pages 392–393.
[11] Norwegian Case, page 222.
[12] Norwegian Case, page 222.

(m) Hannevig offered to repay to claimant "the sum paid in, namely, Kr. 1,540,987.50, plus 4% interest per annum, together with Kr. 20,000.00 to cover our expenses," March 20, 1920, which offer was accepted.[13]

Claim No. 9, $392,492.40.

(a) Hannevig's shipbuilding company, Pusey & Jones, on June 12, 1917, contracted to build Hull 1012, for Hannevig's dummy company, Bulk Oil Transports, Inc.[1]

(b) Hannevig's dummy company, Bulk Oil Transports, Inc., on June 12, 1917, contracted to buy Hull 1012, building at Hannevig's shipbuilding company, Pusey & Jones Co.[2]

(c) Hannevig's dummy company, Bulk Oil Transports, Inc., was notified on August 20, 1917, of the requisition.[3]

(d) Hannevig's dummy company, Bulk Oil Transports, Inc., signed and acknowledged assignment of contract on August 30, 1917, to Maritim Corporation, a nominal consideration being stated.[4]

(e) Hannevig, A/S wrote A/S Maritim, Mr. Karluf Hanssen, (Manager), on September 5, 1917, acknowledging sale of contract on that date, transfer to be made upon certain conditions therein stated.[5]

(f) Hannevig, A/S, stated guarantee of Hannevig to return the purchase money if ship was not delivered in two years, or to make up any difference between the purchase price and the just compensation to be paid by the United States.[6]

(g) Hannevig, A/S is said to have received $474,150.00 on September 20, 1917, through Den Norske Handelsbank from Haugesunds Kreditbank.[7]

(h) Hannevig's name was selected by claimant "early in 1919" to designate the "Hannevig Group" and the claim of the Maritim Corporation was included in this group.[8]

(i) Hannevig, or one of his agents, made a "mistake" in the contract price, stated in the Hannevig inter-company contract, by which

[13] U. S. Counter-case, Appendix, page 355.
[1] Norwegian Case, page 171.
[2] Norwegian Case, page 171.
[3] U. S. Case, Appendix, pages 221–222.
[4] Norwegian Case, Documentary Evidence, pages 260–261.
[5] Norwegian Case, Documentary Evidence, pages 261–262.
[6] Norwegian Case, Documentary Evidence, pages 261–262.
[7] Norwegian Case, Documentary Evidence, page 262.
[8] Norwegian Counter-case, pages 18–19.

the claimant made an overpayment of $174,000.00 to the Hannevig dummy company, assignor.[9]

(j) Hannevig, or one of his agents, made a "mistake" in the amount of the installment paid the Hannevig shipbuilding company, as provided in the Hannevig inter-company contract, by which the claimant made a further "overpayment" of $21,750.00, to the Hannevig dummy company, assignor.[10]

Claim No. 10, $580,093.48.

(a) Hannevig's shipbuilding company, Pusey & Jones, on June 12, 1917, contracted to build Hull 1013, for Hannevig's dummy company, Bulk Oil Transports, Inc.[1]

(b) Hannevig's dummy company, Bulk Oil Transports, Inc., on June 12, 1917, contracted to buy Hull 1013, building at Hannevig's shipbuilding company, Pusey & Jones Co.[2]

(c) Hannevig's dummy company, Bulk Oil Transports, Inc., was notified on August 20, 1917, of the requisition.[3]

(d) Hannevig's dummy company, Bulk Oil Transports, Inc., signed and acknowledged assignment of contract on August 30, 1917, to Hannevig, personally, a nominal consideration being stated.[4]

(e) Hannevig on September 8, 1917, assigned the contract to Tryggve Sagen, a consideration of $235. per ton being stated, upon certain conditions therein stated.[5]

(f) Hannevig gave a guarantee to return the purchase money if ship was not delivered in two years, or to make up any difference between the purchase price and the just compensation to be paid by the United States.[6]

(g) Hannevig's associate in other Christiania Group transactions, Tryggve Sagen, endorsed the assignment contract between himself and Hannevig of September 8, 1917, to the Haug Steamship Company, on October 1, 1917.[7]

(h) Hannevig's associate in other Christiania Group transactions, Harry Borthen, witnessed the signature of Tryggve Sagen in the

[9] Norwegian Case, page 226.
[10] Norwegian Case, page 226.
[1] Norwegian Case, page 172.
[2] Norwegian Case, page 172.
[3] U. S. Case, Appendix, pages 221–222.
[4] Norwegian Case, Documentary Evidence, page 266.
[5] Norwegian Case, Documentary Evidence, pages 267–268.
[6] Norwegian Case, Documentary Evidence, pages 267–268.
[7] Norwegian Case, Documentary Evidence, page 268.

two transactions above outlined, September 8, 1917, and October 1, 1917.[8]

(i) Hannevig's associate in other Christiania Group transactions, Tryggve Sagen, is said to have received $609,210.00 on October 1, 1917, from Haugesunds Privatbank, as purchase money on the contract.[9]

(j) Hannevig's name was selected by claimant "early in 1919" to designate the "Hannevig Group" and the claim of the Haug Steamship Company was included in this group.[10]

(k) Hannevig, or one of his agents, made a "mistake" in the contract price, stated in the Hannevig inter-company contract, by which the claimant made an overpayment of $174,000.00 to the Hannevig dummy company or to Hannevig's associate, Tryggve Sagen, assignors.[11]

(*l*) Hannevig, or one of his agents, made a "mistake" in the amount of the installment paid the Hannevig shipbuilding company, as provided in the Hannevig inter-company contract, by which the claimant made a further "overpayment" of $21,750.00 to the Hannevig dummy company or to Hannevig's associate, Tryggve Sagen, assignors.[12]

(m) Hannevig informed the claimant, who in turn informed its shareholders on April 5, 1919, that the hull in question had been requisitioned, but that he, Hannevig, nevertheless expected to deliver it within the cancellation date stipulated in the contract.[13]

Claim No. 11, $609,083.36.

(a) Hannevig's shipbuilding company, Pusey & Jones, on June 12, 1917, contracted to build Hull 1014, for Hannevig's dummy company, Bulk Oil Transports, Inc.[1]

[1] Norwegian Case, page 173.

(b) Hannevig's dummy company, Bulk Oil Transports, Inc., on June 12, 1917, contracted to buy Hull 1014, building at Hannevig's shipbuilding company, Pusey & Jones Co.[2]

[8] Norwegian Case, Documentary Evidence, page 268.
[9] Norwegian Case, Documentary Evidence, page 268.
[10] Norwegian Counter-case, pages 18–19.
[11] Norwegian Case, pages 230–231.
[12] Norwegian Case, pages 230–231.
[13] U. S. Counter-case, Appendix, page 356.
[2] Norwegian Case, page 173.

(c) Hannevig's dummy company, Bulk Oil Transports, Inc., was notified on August 20, 1917, of the requisition.[3]

(d) Hannevig's dummy company, Bulk Oil Transports, Inc., signed and acknowledged assignment of contract on August 30, 1917, to Hannevig, personally, a nominal consideration being stated.[4]

(e) Hannevig on September 8, 1917, assigned the contract to Tryggve Sagen, a consideration of $235 per ton being stated, upon certain conditions therein stated.[5]

(f) Hannevig gave a guarantee to return the purchase money if ship was not delivered in two years, or to make up any difference between the purchase price and the just compensation to be paid by the United States.[6]

(g) Hannevig's associate in other Christiania Group transactions. Tryggve Sagen, endorsed the assignment contract between himself and Hannevig of September 8, 1917, to Lars Maeland, on October 1, 1917.[7]

(h) Hannevig's associate in other Christiania Group transactions, Harry Borthen, witnessed the signature of Tryggve Sagen in the two transactions above outlined, September 8, 1917, and October 1, 1917.[8]

(i) Hannevig's associate in other Christiania Group transactions, Tryggve Sagen, is said to have received Kr. 1,949,475, on October 1, 1917, from Haugesunds Kreditbank, as purchase money on the contract.[9]

(j) Hannevig's name was selected by claimant "early in 1919" to designate the "Hannevig Group" and the claim of the Mercator Corporation was included in this Group.[10]

(k) Hannevig, or one of his agents, made a "mistake" in the contract price, stated in the Hannevig inter-company contract, by which the claimant made an overpayment of $152,250.00 to the Hannevig dummy company, to Hannevig, or to Hannevig's associate, Tryggve Sagen, assignors.[11]

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[3] U. S. Case, Appendix, pages 221–222.
[4] Norwegian Case, Documentary Evidence, page 272.
[5] Norwegian Case, Documentary Evidence, pages 272–274.
[6] Norwegian Case, Documentary Evidence, pages 272–274.
[7] Norwegian Case, Documentary Evidence, page 274.
[8] Norwegian Case, Documentary Evidence, page 274.
[9] Norwegian Case, Documentary Evidence, page 274.
[10] Norwegian Counter-case, pages 18–19.
[11] Norwegian Case, page 232.

(l) Hannevig, or one of his agents, made a "mistake" in the amount of the installment paid the Hannevig shipbuilding company, as provided in the Hannevig inter-company contract, by which the claimant made a further "overpayment" of $22,837.50, to the Hannevig dummy company, to Hannevig, or to Hannevig's associate, Tryggve Sagen, assignors.[12]

Claim No. 12, $277,871.43.

(a) Hannevig's shipbuilding company, New Jersey Shipbuilding Co., on June 1, 1917, contracted to build Hull 203, for Hannevig's dummy company, Manss Steamship Corporation.[1]

(b) Hannevig's dummy company, Manss Steamship Corporation, on June 1, 1917, contracted to buy Hull 203, building at Hannevig's shipbuilding company, New Jersey Shipbuilding Company.[2]

(c) Hannevig's dummy company, Manss Steamship Corporation, endorsed over the signature of its president, J. B. Simpson, and its secretary, Ralph James M. Bullowa, to the order of Sorlandske Lloyd, present claimant.[3]

(e) Hannevig's claimant company, Sorlandske Lloyd, (Hannevig being a director) endorsed the contract in blank.[4]

(f) Hannevig's associate and co-director, Karl A. Thorbjornsen, was and is manager of Sorlandske Lloyd Company, present claimant.[5]

(g) Hannevig was a director of the Sorlandske Lloyd Company, present claimant, although that fact is apparently evaded or concealed in the Norwegian Case.[6]

(h) Hannevig's associate in other Christiania Group transactions, Harry Borthen, was director of Sorlandske Lloyd Company, present claimant.[7]

(i) Hannevig, Inc., received cable from Norway referring to Sorlandske Lloyd Company, claimant company, as being located on same floor with and as part of the staff of Hannevig's Norwegian office.[8]

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[12] Norwegian Case, page 232.
[1] Norwegian Case, page 174.
[2] Norwegian Case, page 174.
[3] Norwegian Case, Documentary Evidence, page 278.
[4] Norwegian Case, Documentary Evidence, page 278.
[5] Norwegian Case, Documentary Evidence, page 205.
[6] U. S. Counter-case, Appendix, page 349–350.
[7] Norwegian Case, page 205. U. S. Counter-case, Appendix, pages 349–350.
[8] U. S. Counter-case, Appendix, page 9.

(j) Hannevig represented Sorlandske Lloyd Company, present claimant, on May 8, 1918, in negotiation with the Shipping Board concerning Claim 5, and subsequently.[9]

(k) Hannevig, A/S, cabled Hannevig August 1, 1918, stating that Director Olafsen (a co-director of Hannevig in Sorlandske Lloyd) authorized Hannevig to settle as best possible his claim with the Shipping Board.[10]

(l) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Sorlandske Lloyd Company was included in this group.[11]

(m) Hannevig, or one of his agents, took an "overpayment" of $65,625, which although claimed on former presentations of this claim has now been deducted, and is not included in the present claim.[12]

Claim No. 13, $627,500.16.

(a) Hannevig's shipbuilding company, New Jersey Shipbuilding Co., on June 1, 1917, contracted to build Hull 205, for Hannevig's dummy company, Manss Steamship Corporation.[1]

(b) Hannevig's dummy company, Manss Steamship Corporation, on June 1, 1917, contracted to buy Hull 205, building at Hannevig's shipbuilding company, New Jersey Shipbuilding Company.[2]

(c) Hannevig's dummy company, Manss Steamship Corporation, signed and acknowledged an assignment of contract on August 30, 1917, to Hannevig's associate, Karl A. Thorbjornsen, co-director with Hannevig and Manager of Sorlandske Lloyd, a nominal consideration being stated.[3]

(d) Hannevig, A/S, signing for Hannevig's associate, Karl A. Thorbjornsen, contracted to assign on October 1, 1917, the contract in question with H. Kjerschow.[4]

(e) Hannevig's associate, Karl A. Thorbjornsen, co-director with Hannevig and Manager of Sorlandske Lloyd, on October 1, 1917, assigned the contract to H. Kjerschow.[5]

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[9] U. S. Case, Appendix, page 149.
[10] U. S. Counter-case, Appendix, page 11.
[11] Norwegian Counter-case, pages 18–19.
[12] Norwegian Case, pages 233–234.
[1] Norwegian Case, page 175.
[2] Norwegian Case, page 175.
[3] Norwegian Case, Documentary Evidence, page 285.
[4] Norwegian Case, Documentary Evidence, pages 286–287.
[5] Norwegian Case, Documentary Evidence, page 287.

(f) Hannevig's associate, Karl A. Thorbjornsen, is said to have received $500,000.00, on October 2, 1917, from Klaveness' Bank, as purchase money on the contract.[6]

(g) Hannevig Brothers, A/S, are said to have received $12,875.00, on October 2, 1917, from Klaveness' Bank, as purchase money on the contract.[7]

(h) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of H. Kjerschow was included in this group.[8]

(i) Hannevig, or one of his agents, took an "overpayment" of $65,625, which although claimed on former presentations of this claim has now been deducted, and is not included in the present claim.[9]

Claim No. 14, $207,300.90.

(a) Hannevig's shipbuilding company, New Jersey Shipbuilding Co., on June 1, 1917, contracted to build Hull 205, for Hannevig's dummy company, Manss Steamship Corporation.[1]

(b) Hannevig's dummy company, Manss Steamship Corporation, on June 1, 1917, contracted to buy Hull 205, building at Hannevig's shipbuilding company, New Jersey Shipbuilding Company.[2]

(c) Hannevig's dummy company, Manss Steamship Corporation, signed and acknowledged an assignment of contract on August 30, 1917, to Hannevig's associate and co-director in Sorlandske Lloyd, Harry Borthen, a nominal consideration being stated.[3]

(d) Hannevig's associate and co-director in Sorlandske Lloyd Corporation, Harry Borthen, who is also associated in other Christiania Group transactions, is present claimant.[4]

(e) Hannevig, A/S cabled Hannevig August 1, 1918, stating that Harry Borthen, (a co-director of Hannevig and Olafsen in Sorlandske Lloyd) authorized Hannevig to settle as best as possible his and Sorlandske Lloyd's claims with the Shipping Board.[5]

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[6] Norwegian Case, Documentary Evidence, page 287.
[7] Norwegian Case, Documentary Evidence, page 287.
[8] Norwegian Counter-case, pages 18–19.
[9] Norwegian Case, page 235.
[1] Norwegian Case, page 176.
[2] Norwegian Case, page 176.
[3] Norwegian Case, page 176.
[4] Norwegian Case, page 176.
[5] U. S. Counter-case, Appendix, page 11.

(f) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of the Sorlandske Lloyd Company was included in this group.[6]

(g) Hannevig, or one of his agents, took an "overpayment" of $65.625, which although claimed on former presentations of this claim has now been deducted and is not included in the present claim.[7]

Claim No. 15, $591,788.29.

(a) Hannevig's shipbuilding company, New Jersey Shipbuilding Co., on June 1, 1917, contracted to build Hull 204, for Hannevig's dummy company, Manss Steamship Corporation.[1]

(b) Hannevig's dummy company, Manss Steamship Corporation, on June 1, 1917, contracted to buy Hull 204, building at Hannevig's shipbuilding company, New Jersey Shipbuilding Company.[2]

(c) Hannevig's dummy company, Manss Steamship Corporation, signed and acknowledged an assignment of contract on August 29, 1917, to Hannevig's associate in other Christiania Group transactions, Jens Bing, a nominal consideration being stated.[3]

(d) Hannevig, A/S, as broker, sold the contract on or about August 29, 1917, for Hannevig's dummy company, Manss Steamship Corporation, to Hannevig's associate in other Christiania Group transactions, Jens Bing, for $210.00 a ton.[4]

(e) Hannevig, Inc., is said to have received on or about September 4, 1917, $262,500 from Den Norske Handelsbank on account of the assignment to Jens Bing.[5]

(f) Hannevig, A/S, as broker, was authorized to sell the contract "in the first half of September, 1917," for Jens Bing, at a price of $255.00 a ton.[6]

(g) Hannevig, A/S, as broker, sold the contract on September 14, 1917, for Hannevig's associate, Jens Bing, to E. & N. Chr. Evensen, for $255. a ton, upon certain conditions therein stated.[8]

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[6] Norwegian Counter-case, pages 18–19.
[7] Norwegian Case, page 240.
[1] Norwegian Case, page 177.
[2] Norwegian Case, page 177.
[3] Norwegian Case, Documentary Evidence, page 300.
[4] U. S. Counter-case, Appendix, page 233.
[5] U. S. Counter-case, Appendix, pages 233–234.
[6] U. S. Counter-case, Appendix, page 234.

(h) Hannevig's associate in other Christiania Group transactions, Jens Bing, signed an assignment of contract on October 2, 1917, to E. & N. Chr. Evensen, a nominal consideration being stated.[8]

(i) Hannevig is said to have received $487,500 on October 2, 1917, from Andresen's Bank, on account of assignment to E. & N. Chr. Evensen.[9]

(j) Hannevig, by Sven Bjork, acknowledged receipt on October 3, 1917, of Kr. 1,584,375, on account of assignment to E. & N. Chr. Evensen, notwithstanding the fact that the record in the Norwegian documents shows no assignment from him to E. & N. Chr. Evensen, present claimants.[10]

(k) Hannevig's dummy company, Manss Steamship Corporation, signed and acknowledged an assignment of contract on November 8, 1917, to E. & N. Chr. Evensen.[11]

(l) Hannevig's name was selected by claimants "early in 1919" to designate the "Hannevig Group," and the claim of E. & N. Chr. Evensen was included in this group.[12]

(m) Hannevig, or one of his agents, took an "overpayment" of $65,625, which although claimed on former presentations of this claim has now been deducted and is not included in the present claim.[13]

The foregoing summary shows that Christoffer Hannevig instead of being concerned in only contracts on which claims are based amounting to less than one-fourth of the total claim, was very intimately concerned in all of the 15 claims amounting to $16,403,659.51. In other words Hannevig was concerned in the transactions involved in 100% of the claim.

1. Hannevig the Avowed and Authorized Agent of Every Claimant.

The attempt of the Norwegian Counter-case to build up the impression that Hannevig was concerned in only about one quarter of the claims, measured by money claimed, is thwarted by the admissions of the claimants in the Counter-case itself. These admis-

[8] Norwegian Case, Documentary Evidence, page 300.
[9] Norwegian Counter-case, Appendix, pages 241–242.
[10] Norwegian Case, Documentary Evidence, page 300.
[11] U. S. Counter-case, Appendix, pages 237–238.
[12] Norwegian Counter-case, pages 18–19.
[13] Norwegian Case, page 248.

sions are unintended, and are accompanied by a mixture of artless ingenuousness and shrewd design that would appeal to any sense of humor.

The claimants wanted to get rid of Hannevig; that is why they organized and called themselves the "Hannevig Group."!

Mr. H. Kjerschow, claimant under Claim No. 13, is used as the vehicle to convey this very clear and convincing explanation of the "Hannevig Group." They were tired of Hannevig and tired of having their claims identified with Hannevig's name, so they got together and organized with the "whole purpose" of displacing Hannevig, and then called themselves the "Hannevig Group."

Mr. Kjerschow's explanation is in the form of a letter to the Norwegian Agent "explaining why the present Christiania Group of Norwegian shipowners was referred to as the 'Hannevig Group.'" He explains that late in the year 1917, many of the shipowners now members of the Christiania Group individually authorized Mr. Hannevig to represent them in the United States. Mr. Kjerschow says they were not an organized group, but "simply several individuals with a common agent."

Mr. Kjerschow tells of the organization of the "Hannevig Group," as follows:

"Mr. Hannevig's efforts, whatever they may have been, did not produce a settlement. Accordingly, early in 1919, these men, who had been represented by Mr. Hannevig, formed a group to present their own claims. Apparently, in drawing up the powers of attorney, *before a name had definitely been decided upon, the term 'Hannevig Group' was used to distinguish this group from the Stray group.* In a way, it was a most misleading designation, however, *since the whole purpose of forming the group was to displace Mr. Hannevig as the representative of the shipowners.*"[1]

Now, after learning that the "Hannevig Group" was formed and named solely to shake off all identity with Hannevig, it is worth while to go back to that period in 1917 and 1918 when Hannevig was simply the common agent of individual claimants.

HANNEVIG WANTED ONLY $175 PER TON FOR HIS NEW JERSEY SHIPS.

In 1917, Mr. Hannevig was not claiming $265 and $300 per ton for his ships. On December 17, his right-hand man Bullowa, the same Bullowa who invented the Flexible, Elastic and Adjustable Con-

[1] Norwegian Counter-case, page 19. Italics ours.

tract Price, made a proposal to the Fleet Corporation in which he said:

"Mr. Hannevig is willing to accept $175 per ton dead-weight for Nos. 201, 202, 207, 208, 209, 210, 211 and 212."[1]

These eight vessels were identical in size and design with the four ships on which the experts of Norway are now setting such exalted values. If the contracts for the ships were worth $265 per ton as one of the experts swears, why was Mr. Hannevig willing to settle for $175?

1918 PROPOSAL TO SETTLE FOR $237.50 PER TON.

In 1918, it is evident that the Hannevig imagination had started on its flight, but had not yet soared to the heights now occupied by the Norwegian claimants. On July 16, 1918, he wrote to the United States Shipping Board and made the following proposal:

"Regarding the fraction of the Norwegian Ship owners that I represent, I would suggest that you get the Board together and say that you will pay my friends at $237.50 per ton providing I can also get all the other ship owners in Norway to accept this price and *I have no doubt that I will have such authority by exchange of cables.*"[2]

On July 18, 1918, Christoffer Hannevig in New York cabled to Christoffer Hannevig in Norway and asked that his shipowning friends be requested to agree with him in accepting $237.50 per ton.[3]

The Shipping Board did not consider favorably any settlement on the theory that completed ships were to be paid for. It was not long thereafter when Mr. Burling's memorandum of August 26, 1918 was written taking the ground that all that had been taken was "a congeries of wood and iron" and that all that should be paid for was the cost of the materials of which it was composed and the labor spent upon these materials.

Mr. Hannevig continued to press his claim, and finally became so urgent that he could not wait for letters but used the wires. On October 10, 1918 he sent the following telegram to Chairman Hurley of the United States Shipping Board:

"Understand Norwegian owners requisitioned contracts willing accept two hundred sixty dollars per ton flat price stop Provided Shipping Board would confirm this I would subscribe behalf of my

[1] U. S. Case, Appendix, page 276.
[2] U. S. Counter-case, Appendix, Page 10. Italics ours.
[3] See telegram, U. S. Counter-case, Appendix, page 11.

Norwegian friends ten million dollars in Fourth Liberty Loan stop Please telegraph reply greatly obliging.

Christoffer Hannevig."[1]

On October 16, Mr. Hannevig wrote and confirmed this telegram. Prior to that time Mr. Hannevig had made another proposal for a settlement on all the higher priced vessels at $250 a ton. These vessels covered all of those involved in the Christiania claims, 1 to 6. Mr. Hannevig said:

"I would be prepared to recommend to the owners that they make immediate settlement for $250 per ton, * * *"[2]

That letter was written May 8, 1918.

HANNEVIG RECOGNIZED TRANSACTIONS AFTER AUGUST 3, 1917, COULD NOT BE HELD TO BE BONA FIDE.

In his letter of May 8, 1918, Mr. Hannevig definitely acknowledged the fact that the transactions in Norway after August 3, 1917, were open to attack. He said:

"All these sales were effected after the 3d of August, and I understand that the *above-mentioned owners could probably get the sales revoked, but there would be a great many difficulties to overcome, as in many cases the owners have distributed the profit among their shareholders.* Some of my friends would, therefore, rather suffer a loss than take the chance of ultimately getting their money refunded. *Many of the owners say that they have had no notification of the requisition, and, therefore, have acted in good faith, but I understand from our lawyers in Norway, that as long as the builders or owners' representatives here in the United States have been informed of the requisition the question of good faith will not hold good.*"[3]

b. HANNEVIG'S RELATIONS TO THE CLAIMS IMPORTANT.

1. Norway's Reticence Proves Hannevig's Relevance.

The importance of Hannevig's relations, intimate or otherwise, to the claims is a mixed question of law and fact, or perhaps rather logic and fact. As Exhibit No. One in proving the importance of Hannevig's relations, the United States offers in evidence the reticence of the Norwegian case.

Mr. Hannevig personally, or through his "controlled" companies,[4] was the builder of nine of the fifteen hulls of the Christiania group; he was the original purchaser of eleven of the fifteen

[1] U. S. Counter-case, Appendix, page 14.
[2] U. S. Case, Appendix, page 149 at 150.
[3] U. S. case, Appendix, page 150. Italics ours.
[4] Norwegian Counter-case, page 14.

hulls of the Christiana group, owned these eleven hulls on the date when they were requisitioned, admittedly purchased two of the remaining four hulls, and appears to have purchased the other two. At any rate he was a promoter and director respectively for the claimant companies in these two claims, and these claimants also had operating arrangements with one of his controlled companies, the Baltimore and South American Navigation Company. He was the promoter of six of the eleven corporate claimants, represented all the claimants before the United States Shipping Board, and his name was finally given to the Hannevig group which was formed to "displace" him.

It is submitted that this record, merely as a matter of general interest and historical back-ground, entitled Mr. Hannevig to passing, if not honorable, mention in the Norwegian Case and yet it is believed to be literally true that Christopher Hannevig is not mentioned therein aside from the unavoidable reproduction of his name in documents, schedules, lists, assignments, etc., and as pointed out in the Counter-case of the United States, in at least one instance his name has been deleted from a prospectus (in Claim No. 3), where it should appear, and in another instance, (Claim No. 5) it has been omitted from the list of directors of the claimant company, prepared by Mr. Hannevig's old friend and associate, Karl A. Thorbjornsen.[1] Such a conspiracy of silence is more than significant; it is vocal. It is respectfully submitted that it demonstrates that Mr. Hannevig is not irrevelant; he is revelant and embarrassing. But there are other instances in the Norwegian Case of eloquent silence with respect to Christopher Hannevig which are more important, because the reasons for the silence are both more serious and more evident.

In five separate places, the Norwegian Case in explaining a very remarkable "mistake" in connection with the sale of five of the Hannevig ships, makes this statement with an occasional varying of the language:

"At the time of the purchase of the contract by the present owner from the Bulk Oil Transports, Inc., the purchaser *and the agent of the vendor* were in Norway while the original contract was in the United States and not available for inspection."[2]

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[1] U. S. Counter-case, pages 21–22.

[2] Norwegian Case, pages 215, 222, 226, 230. Italics ours.

Why is it that the identity of the "*agent of the vendor*" is not disclosed?

Other evidence in the record defeats any attempt at concealment. The agent was Christoffer Hannevig, acting in his character as an individual or through his corporate *alter ego*, Christoffer Hannevig, A/S.

2. Hannevig's Character.

NINE MISTAKES YIELD HIM $1,261,912.50.

While this mysterious "agent of the vendor" was in Norway, there were nine "mistakes" that yielded $1,261,912.50 to the Hannevig coffers. The Norwegian Case lays no stress upon these mistakes but, as they had to be explained in order to have the figures agree, they are glossed over as inconsequential errors of no interest to the Tribunal. The United States submits that they are of peculiar interest to the Tribunal and that their manifest significance demands an explanation rather than a casual mention and cursory dismissal.

Other evidence before the Tribunal indicates that these "mistakes" point directly to the possibility that the plan of Hannevig's lieutenant, Bullowa, for fabricating spurious contracts with increased prices was actually carried out in the case of the Pusey & Jones ships.

"Overpayment" is the innocent term used in the Norwegian Case to describe the method by which Hannevig got $1,261,912.50 to which the Kingdom of Norway admits he was not entitled. This large aggregate was allegedly paid on suppositions and understandings relative to contract prices and progress payments made at the time Hannevig or his agent sold the contracts.

The "overpayments" and the suppositions and understandings upon which they were based were as follows:

A. On the supposition that the contract prices were only $140 per ton instead of being $35, $40, and $45 higher as was "subsequently developed:"

Claim No. 7—Hull No. 1010 $45 per ton or	$195,750
Claim No. 8—Hull No. 1011 $45 per ton or	195,750
Claim No. 9—Hull No. 1012 $40 per ton or	174,000
Claim No. 10—Hull No. 1013 $40 per ton or	174,000
Claim No. 11—Hull No. 1014 $35 per ton or	152,250
Total "overpayment" on supposition A	$891,750

B. On the supposition that Hannevig's dummy company, as contract owner had made a 10% instalment payment on a contract price of $609,000, instead of only 5% of a much higher contract price "subsequently developed:"

Claim No. 7—Hull 1010	$20,662.50
Claim No. 8—Hull 1011	20,662.50
Claim No. 9—Hull 1012	21,750.00
Claim No. 10—Hull 1013	21,750.00
Claim No. 11—Hull 1014	22,837.50
Total "overpayment" on supposition B	$107,662.50

C. On the understanding that Hannevig's dummy company, as contract owner had paid initial instalments of 10% or $87,500 on each of the four ships at the yard of the New Jersey Shipbuilding Co. instead of only $21,875 and giving his notes for the balance, as was later discovered:

Claim No. 12—Hull No. 203	$65,625.00
Claim No. 13—Hull No. 205	65,625.00
Claim No. 14—Hull No. 206	65,625.00
Claim No. 15—Hull No. 204	65,625.00
Total overpayment on understanding C	$262,500.00

Summary.

"Overpayment" on supposition A	$891,750.00
"Overpayment" on supposition B	107,662.50
"Overpayment" on understanding C	262,500.00
Total "overpayment"	$1,261,912.50

AS EXPLAINED IN THE NORWEGIAN CASE.

As typical of the five separate explanations of the "overpayments" the following is quoted from the explanation for Claim No. 8 in the Norwegian Case:

"On September 29, 1917, the contract was assigned by the Bulk Oil Transports, Incorporated, to The Tromp Steamship Company, for a consideration of $474,150. Of this amount $216,412.50 was an over-payment for which the purchaser will look to the vendor and not to the United States. At the time of the purchase of the contract by the present owner from the Bulk Oil Transports, Inc., the purchaser and the agent of the vendor were in Norway while the original contract was in the United States and not available for in-

spection. It was supposed that the original contract price was $140 per ton and the transaction was closed on that basis. It subsequently developed that the price was in fact $185 per ton. This resulted in an over-payment of $45 per ton, or $195,750. It was also supposed that the original contract called for a first installment payment of 10% on the supposed original contract price of $609,000 and that this first installment had actually been paid to the yard. On this assumption the purchaser paid to the vendor $60,900 as reimbursement for this supposed first installment. However, it subsequently appeared that the contract actually called for a first instalment of only 5% of the actual contract price of $804,750, which installment of 5% amounting to $40,237.50 had actually been paid to the builder by the original owner. Accordingly, the present owner made another over-payment to his vendor of $20,662.50. The total over-payment, $216,412.50, is deducted from the cost of the contract to the Tromp Steamship Company."[1]

A typical explanation of the misunderstanding under which an excess of $262,500 was allegedly paid on the four New Jersey hulls is quoted from the Norwegian Case in connection with Claim No. 15 as follows:

"On August 29, 1917, the contract was assigned by the Manss Steamship Company to Jens Bing, a Norwegian subject, and on October 2, 1917, from Jens Bing to E. & N. Chr. Evensen, Inc., for a consideration of $487,500.00. Of this amount $65,625.00 was an over-payment for which the purchaser will look to his vendor and not to the United States. At the time of the purchase of this contract by the present owner it was understood that the Manss Steamship Company, the original contractor, had paid $87,500 to the shipyard as a first installment payment. Accordingly the purchaser paid as part of the purchase price an amount equal to this supposed payment of $87,500. In fact, however, the said Manss Steamship Company had paid only $21,875 in cash, and for the balance had given its notes. These notes have never been paid. The purchaser therefore made an overpayment of $65,625.00 which in computing its claim against the United States has been deducted from the cost price of the contract."[2]

EXPLANATION UNSATISFACTORY.

The United States respectfully submits that the explanations given in the Norwegian Case are not satisfactory explanations. Obviously intended as an easy dismissal of the subject, the so-called explanations serve only to whet the appetite of legitimate curiosity for the real truth of these truly remarkable transactions. It is submitted with the utmost deference that the claimants owe this Tribunal an explanation that will really explain.

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[1] Norwegian Case, pages 221–222.
[2] Norwegian Case, page 243.

WAS HANNEVIG MISTAKEN IN THE CONTRACT PRICE?

It is extremely difficult to understand how such a series of "mistakes" could have occurred. Christoffer Hannevig was in Norway. He, in his individual capacity or cloaked in his Norwegian corporation, was selling these contracts. They were Hannevig contracts throughout. They were in his own name or the name of some dummy corporation which he owned and controlled. He had made all the contracts. He owned the two shipbuilding companies with which the contracts were made. His knowledge of the contracts was sufficient for him to make written agreements of sale stating correctly certain technical details as to terms and dimensions.

HANNEVIG EQUIPPED HIMSELF WITH DATA BEFORE HE SAILED FOR NORWAY.

There is good reason to believe that Hannevig, before sailing for Norway, took pains to equip himself with all the data necessary to aid him in selling contracts abroad. This makes it all the more strange that he should have made a mistake concerning contract prices or progress payments.

Careful preparation was made for Mr. Hannevig's trip abroad, as is shown by a letter from Christoffer Hannevig, Inc., written on July 2, 1917, to the Pennsylvania, asking for certain data, and adding the following request:

"Further, if you have anything else of interest for Mr. Hannevig to take over to the other side please include it."[1]

The Pennsylvania Shipbuilding Company responded on July 3, 1917, by sending the following:

1. Schedules of the Pennsylvania Shipbuilding Co.
2. Schedules of the New Jersey Shipbuilding Co.
3. Two albums showing photographs from Pennsylvania Shipbuilding Company, including one photograph from the New Jersey Shipbuilding Company.
4. General plan of arrangement of the two yards.
5. *One set of contracts* of vessels 1 to 6 inclusive to be built by the New Jersey Shipbuilding company.

The letter notifying Hannevig of the transmittal of these documents contained the following illuminating statement:

[1] U. S. Counter-case, Appendix, page 214.

"*You will please note that the delivery dates are left blank on these contracts.* Will you please copy these dates from the agreements recently mailed you to be signed by the Manss Steamship Corporation as these were sent away before a copy of these dates were made on our records. Also, please return to us a signed copy of this agreement for our files at your earliest convenience.[1]

It is not a far-fetched inference that Hannevig was equally careful in equipping himself with copies of contracts between the Bulk Oil Company and the Pusey and Jones Company.

Under these circumstances it is almost inconceivable that Hannevig should have had such a lapse of memory as to think that the contract prices of the Pusey and Jones ships were only $140 per deadweight ton when they were actually $175, $180, and $185. per d. w. t. Does Norway expect seriously to have this Tribunal believe that Christoffer Hannevig mistakenly sold five ships on the representation that the contract prices were almost $1,000,000 less than they really were? The "mistake" on the five Pusey & Jones ships amounted to $999,412.50.

Business men as shrewd as Hannevig are not likely to make mistakes as big as that.

THE "TAINT" OF HANNEVIG.

The Norwegian Counter-case makes one statement which has already been quoted but which will bear repetition.

"Although no specific criticism of any single transaction is made, the manner of presentation is designed to suggest that there is some *undisclosed taint* affecting the claims of the Christiania Group, introduced in the Case of the United States as the 'Hannevig Group'"?[2]

The taint is no longer undisclosed. This episode of the "mistake" of $1,261,912.50 calls emphatic attention to one of the "transactions" where it is to be found.

The Kingdom of Norway is confronted with a three-horned dilemma. It cannot escape all of the following alternatives:

1. If Hannevig was capable of such an incredible error as to take $1,261,912.50 on the suppositions given in explanation, this very capacity for Brobdingnagian blunder casts discredit upon everyone of the fifteen claim transactions in which he was concerned.

[1] U. S. Counter-case, page 215.
[2] Norwegian Counter-case, page 14. Italics ours.

2. If Hannevig did not take the $1,261,912.50 through error, he took it through fraud and misrepresentation.

3. If Hannevig took the $1,261,912.50 on a true statement of contract prices, then some-one, either later or previously while Hannevig was out of touch with companies in America, brought fictitious and spurious contracts into existence with fictitious and exorbitant prices.

Frankly, the last alternative is the most plausible of all.

CONTRACT PRICES ON SISTER SHIPS RAISED $47.50 PER TON.

Raising contract prices would have been nothing new to the Pusey & Jones Company, according to a letter from Alvin C. Birdsall, an auditor who had examined the accounts and affairs of the company. That letter is published in full in the Appendix to the U. S. Case. It includes one paragraph as follows:

"Mr. Hannevig caused the company to contract with himself for these vessels at a price of $100 per ton, and four payments were made by him at this rate. *This price was later increased to $147.50 per ton*, there being still due and unpaid a balance of $76,000 payments made in October and December, 1916. All these ships have since been sold at a considerable advance to other parties, the Pusey & Jones Company not profiting by this transfer."[1]

BULLOWA'S PROPOSAL TO CREATE SPURIOUS CONTRACTS AT HIGHER PRICES.

The readiness of Hannevig's lieutenant in America to attempt to victimize the United States with spurious contracts is amply demonstrated by the record before this honorable Tribunal. The arch-fabricator appears to have been Ralph James Bullowa, the legal guide and counselor of Hannevig and an officer in his American corporations.

On July 25, 1917, when requisition was certain, Bullowa took active steps to cheat his government with fictitious prices on ships to be requisitioned. The Hannevig company of which he was president, had four contracts with the Hannevig Shipbuilding concern known as the Pennsylvania Shipbuilding Co. Bullowa made a written proposal that the prices be increased so the United States government would have to pay more in taking the ships over. His letter is a gem among the many illustrations of the methods of Hannevig's lieutenants. Let it speak for itself:

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[1] U. S. Case, Appendix, page 235.

"32 Broadway,
"New York, July 25, 1917.

"H. E. Norbom, Esq.,
Land Title Building,
Philadelphia, Pa.

"Dear Mr. Norbom: The four last contracts were sold to the Bulk Oil and my information is that the cost was $125 per ton. *I do not know what information you have given the United States Government about these contracts but of course we would not want to have them taken over at that price. It might be advisable to have the present contracts cancelled and new contracts made as of a month ago at a price of, say $190 per ton. Would this course of procedure meet your views? Suppose you telegraph me in the morning in such a way that I only would be able to understand the purport of your wire.* How will this affect our books and the notes heretofore given.

Very truly yours,

Ralph James M. Bullowa."[1]

TOO LATE TO DEFRAUD THE GOVERNMENT!

The reply to Bullowa's letter indicates that "some one had blundered" badly, for the truth about the contract prices had already been reported to the Navy Department. The only consoling thought in this communication was that Hannevig's Pennsylvania Shipbuilding Company had not overlooked the possibilities of deceiving the government. It had thought and planned, but had decided it would be too dangerous to change contract dates and change the prices from $125 to $200 per ton as at one time contemplated. All of this is plain from the letter which purports to have been signed by the Shipbuilding Company's Secretary and Treasurer. The first few paragraphs deserve quoting here to show the perfect sympathy between Bullowa in New York and his associate at the plant:

"July 27, 1917.

Ralph James M. Bullowa, Esq.,
32 Broadway, New York.

Dear Sir: Your letter of July 25th, addressed to Mr. Norbom, has been referred to the writer.

We have been aware of the fact that in reporting the Bulk Oil Steamers to the Navy Department, at the prices at which the contracts were closed, we may have made it difficult for you to dispose of these steamers to the Government at the prices now prevailing, should the Government decide to take them over.

Conditions, however, have led us to the following argument:

When the Navy Department asked us some time in April to give them an accurate list by return mail of the steamers contracted for, together with other data, including prices, we were considering for

[1] U. S. Counter-case, Appendix, page 217. Italics ours.

a moment leaving out the Bulk Oil Steamers (the Nos. 5, 6, 11, 12, 13 and 14) but found this inadvisable, first, because the Government might then have found occasion to request us to reserve room for their steamers after No. 10 and No. 4 were finished and, secondly, because these Bulk Oil Steamers had already been reported to General Electric Company and the various steel companies, before we could contract for machinery and material for these steamers.

The next thought in our minds was to make out new contracts with the Bulk Oil Transports, and at such prices as Mr. Hennevig might direct, but this would involve changing the date from August 1st to some later date around March. This, however, could not be done because the Bulk Oil Steamers, as mentioned above, had already been reported as contracted for and we could not undertake to keep the contract date and raise the price from $125 to say $200 per ton, because everybody would know that such prices were not paid on August 1st on such vessels for delivery two years hence." [1]

STILL TIME TO FIX CONTRACTS WITH PUSEY & JONES.

The unfortunate predicament which prevented the manipulation of the Bulk Oil Transport contracts at the Pennsylvania Shipbuilding Company did not govern the last six Bulk Oil Transport contracts with the Pusey & Jones Company.

Either the late date of these contracts or greater caution and foresight had kept these contracts out of the report to the Navy Department. At least, there is nothing in the record to show that contract dates or prices had been reported to any governmental agency up to the date of requisition.

On the other hand there is much in the record to show that the Pusey & Jones Company would not disclose the dates of contracts or contract prices.

The contracts were allegedly dated June 1, 1917, but an earnest effort by the Fleet Corporation, beginning June 15, 1917, did not elicit that information until long after requisition.

INFORMATION WITHHELD BY PUSEY & JONES.

On June 15, 1917, the General Manager of the Fleet Corporation sent a long communication to Pusey & Jones asking for information and transmitting lengthy and detailed data sheets to be filled out. These data sheets called specifically for contract prices and for other essential information regarding the contracts.[2]

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[1] U. S. Counter-case, Appendix, pages 217–218. Italics ours.
[2] U. S. Case, Appendix, pages 208 to 210.

The Pusey & Jones Company replied under date of June 29, 1917, but did not give any information about contract prices on the last 6 hulls now known as hulls 1009 to 1014, five of which are involved in the Christiania claims. It barely mentioned the six contracts saying the six ships were for account of the Bulk Oil Transports, Inc., and were to be duplicates of ships building for the Cunard line.[1]

Finally on August 16, 1917, after requisition and as a result of special efforts by the Fleet Corporation's District Officer, the Pusey & Jones Company sent in data sheets for the last six ships, *but the requested information concerning contract price was omitted. The blank spaces calling for information about the contract, the date of last payment and other information were left blank.*[2]

This apparently studious concealment of the contract prices has a decided significance in the light of the unexplained transactions under which Hannevig sold these contracts thinking they were $140 per ton "where, as a matter of fact" they were $175, $180 and $185 per ton.

It is respectfully submitted that the facts to which attention has been drawn are strongly suggestive that Hannevig did not make a mistake, but that the contracts actually were at $140 per ton and that later new contracts at higher prices were substituted as part of a broad general scheme to make indemnity from the United States as high as possible.

IF CONTRACT FOR HULL 1013 WAS NOT $140 PER TON WHY WAS IT NOT DISCOVERED IN THE EXAMINATION AT THE TIME?

In selling the contract for Hull 1013 to Tryggve Sagen, Christoffer Hannevig and Sagen signed an agreement declaring the price to be $140 per ton. That agreement contained a provision as follows:

"The difference between this price *and the original contract price ($140 per ton) plus the already paid ten per cent. of the original contract price shall be paid when the purchase is finally closed, which will be when Mr. Sagen's experts have gone through and reported by cable the documents of the case in New York, which shall be placed at his disposal by Mr. Hannevig's representative there.*[3]

[1] U. S. Case, Appendix, pages 210–211.
[2] U. S. Case, Appendix, page 220. U. S. Counter-case, Appendix, page 23.
[3] Norwegian Case, Documentary Evidence, page 267. Italics ours.

Clearly, here was a case where the contract was not to close until Sagen's experts in New York had gone over the contracts and reported that they were in accordance with Hannevig's representations. There is no evidence that any money was paid until Oct. 1, 1917. What was Sagen waiting for if not for the report from his experts in New York?

WHAT CONTRACT DID SAGEN'S EXPERTS SEE?

It would be interesting to know what contract was shown to Sagen's experts in New York. Surely it must have been a contract at $140 per ton, or the experts would have cabled Sagen that he had been deceived. Also, it would be interesting to know what document was shown to Sagen's experts as proving progress payments of 10% on an original contract price of $140 per ton. If they had been real experts they would have noted the discrepancy if they had been shown that the installment paid was only 5% on some entirely different price.

Hannevig made similar agreements on other purchases, and it seems strange that no one discovered then that the contract prices and installments paid were not as represented.

INITIAL PAYMENTS INDICATE CONTRACT PRICES WERE NOT AS CLAIMED.

Initial payments are usually indicative of contract price, but in this case the first three payments on the Pusey & Jones hulls bear no apparent relationship to the several contract prices claimed. It is customary in making shipbuilding contracts to provide for initial and progress payments which will represent an even percentage of the contract price. Usually this percentage is 10%.

In practically all cases the Pusey & Jones progress payments represented an even percentage of the contract price or an even decimal fraction of an even percentage of the contract price. For instance, Christoffer Hannevig, in a letter of August 27, 1919, shows progress payments made by his two dummy companies, the Bulk Oil Transports Inc. and the Manss Steamship Company on eight vessels not involved in the Norwegian claims. On four of these vessels the contract price, progress payments and percentages represented by the progress payments were as follows:

PENNSYLVANIA SHIPBUILDING COMPANY.

Hull No.	Price.	Progress Payments.	Percentage.
11	$1,562,500	$156,250.00	10 %
12	$1,562,500	$1,562.50	0.1%
14	$937,500	$937.50	0.1%
PUSEY & JONES COMPANY.			
1009	$826,500	$41,325	5%

On hull No. 13 of the Pennsylvania Shipbuilding Company it might appear that the customary practice was not followed because on a contract price of $937,500, progress payments of $71,250 were made. This, however, is easily explained. As seen in the case of hull No. 14, Hannevig's first payment was $937.50. It was apparent that in the case of hull No. 13 he made an initial payment of $937.50 and later made payments aggregating 7½%. This would make total payments as follows:

Initial payment, one tenth of 1%	$937.50
Subsequent payments 7.5%	70,312.50
Total payments reported	71,250.00

On the three Manss Steamship Company hulls being built at the New Jersey Shipbuilding Company plant, the progress payments were shown by Hannevig as an even 10% on two of the vessels and 5% on the third vessel.[1]

Edward H. Heilman, Assistant Treasurer of Pusey & Jones Company, reported under date of October 18, 1919, showing progress payments on hulls 203, 204, 205 and 206, all involved in the Christiania Claims. His report showed that the payments in cash and notes aggregate $87,500 per vessel, exactly 10% of the contract price. It has already been shown that on hull 1009, which immediately precedes the 5 Pusey & Jones hulls involved in the Christiania claims the progress payments were an even 5%. It is of interest to note that on the 6 hulls, 1003 to 1008 inclusive which were building in the yard at the same time, the progress payments represented even percentages. For instance, on hull 1003 and 1004 the total payments equaled three payments of 10% each or an aggregate of 30%. On hulls 1005 to 1008 inclusive the payments were exactly 10%.[2]

[1] U. S. Case, Appendix, page 337.
[2] U. S. Case, Appendix, page 232.

The most significant illustration of all refers to Hulls 1001 and 1002. These were reported on August 30, 1917, by C. B. Lynch, Assistant Treasurer of Pusey & Jones, as follows:

"Hulls 1001–1002:	
"Contract price $590,000 each	$1,180,000.00
"Cash received to date on account	396,000.00
"Balance yet to be paid	784,000.00"[1]

At first glance the payments on hulls 1001 and 1002 appear to show that payments were not based on even percentages of the contract price. The payment of $396,000 is a very uneven fraction, being 33.559322349+ % of the contract price.

However on analysis it becomes quite clear that this apparently uneven percentage is not uneven at all, but is based on 10% of two different contract prices. *It is confirmatory evidence that Hannevig or his lieutenants did raise contract prices.*

To analyze the above payments it is necessary to know the different contract prices used. This information is in the record, being contained in the September 5, 1917, report of Alvin C. Birdsall, the Fleet Corporation's Auditor. Mr. Birdsall tells of contracts that Hannevig made at $100 per D. W. T. and which were later increased to $147.50 per D. W. T.[2]

These hulls are identified by the fact that hulls 1001 and 1002 were 4000 ton hulls and their final contract price was $590,000 each, which is at the rate of $147.50 per ton.[3]

At the original price of $100 per D. W. T. these two hulls would have had a contract price of $400,000 each.

With these basic facts, it easy to analyze the progress payments on hulls 1001 and 1002, and to show the evidence that, as Mr. Birdsall reported, prices were raised.

The analysis follows:

Hull 1001—4000 D. W. T. at $100=	$400,000	
Hull 1002—4000 D. W. T. at 100=	400,000	
10% progress payments on each hull equals		$40,000
Four payments at 10% (Birdsall said four) equals		$160,000

[1] U. S. Case, Appendix, page 232.
[2] U. S. Case, Appendix, page 235.
[3] Norwegian Case, Documentary Evidence, page 89.

Hull 1001—4000 D. W. T. at $147.50=	$590,000	
Hull 1002—4000 D. W. T. at 147.50=	590,000	
10% progress payments on each hull equals		$59,000
Four payments at 10%, two on each hull, equals		$236,000
Total payments reported by Shipbuilder		$396,000

Knowing the two contract prices, the weird looking percentage of 33.559322349 resolves itself into a series of simple even payments of 10%, and, incidentally, there is disclosed significant indication of what probably happened in the case of the five Pusey & Jones hulls involved in the Christiania claims.

From the foregoing it is evident that it was uniformly the practice in the case of the hulls considered to base progress payments on even percentages of the contract price.

NO FIXED RELATIONSHIP BETWEEN ORIGINAL PROGRESS PAYMENTS AND PRICES NOW CLAIMED.

However when we come to consider the 5 hulls, 1010 to 1014, involved in the Christiania claims it is found that there is no fixed relationship between the first three progress payments reported on the contracts owned by Bulk Oil Transports Inc, and the prices now claimed. The first payments made June 20, 1917, on each of the 5 hulls are reported by Mr. Heilman as follows:

Hull 1010	$4,223.75
1011	4,223.75
1012	4,109.59
1013	4,109.59
1014	3,995.43

Taking hull 1012 as an example it is found that instead of being an even percentage of the alleged contract price of $783,000, the initial payment of $4,109.59 is a badly fractured fraction of that amount. To carry the figures only a short distance it is found that the payment is 0.5248556 of the alleged contract price. This very extraordinary fraction is slightly over half of one percent. The second payment of June 22, is the same, and the third payment of June 27, 1917, is just twice as much. It is not until the July 6, 1917, payment is reached that a distribution is made showing 5% of the alleged contract price.[1]

[1] U. S. Case, Appendix, page 342.

The payments on the other hulls are equally out of relationship to the contract prices claimed. These peculiar payments should be explained. As it stands, they are strongly suggestive of payments made at a time when it was uncertain what contract prices would be claimed, with a later adjustment to make an even 5% of the contract prices finally decided upon.

THE POSITION OF THE UNITED STATES.

The Norwegian Counter-case takes the position that what is said in the Case of the United States about Hannevig and his methods is simply irrelevant aspersion of individual Norwegian citizens.[1]

The representatives of the United States wish to make it especially clear that they are not engaged in a miscellaneous attempt "to disparage individual Norwegian citizens." They fully recognize that Mr. Hannevig's lieutenants were both American and Norwegian and that in particular the two gentlemen whose readiness to deceive the Government of the United States, by altering contracts, is self-confessed on the record, were presumably Americans. The representatives of the United States are simply endeavoring to follow the facts, and the facts seem to them not to befriend Mr. Hannevig and certain of his associates both American and Norwegian. To say this is to reflect neither upon America nor Norway, nor Americans nor Norwegians as such; it is simply to discharge the unpleasant duty of animadverting upon the conduct of certain men believed to be relevant to the issues to be determined by this honorable Tribunal.

It is submitted that the Counter-case of the United States shows that it is very doubtful whether or not the Bulk Oil and Manss contracts were entered into at the time when they are supposed to be dated.[2]

It is further submitted that by the evidence which has been analyzed in the foregoing pages, it is made equally doubtful whether or not these contracts were originally entered into at the prices which they purport to show. This doubt has been raised by showing that some of Mr. Hannevig's lieutenants, among them Mr. Bullowa, Hannevig's trusted adviser in all these intercompany contracts, were ready and willing to ante-date contracts and to raise prices whenever

[1] Norwegian Counter-case, page 1.

[2] Counter-case of the United States, pages 21–28. See particularly U. S. Counter-case, Appendix, page 215.

they could do so without detection and by further showing that through a "mistake" ostensibly made by the "agent" of the vendor, that is, Christopher Hannevig, overpayments amounting to a million two hundred thousand odd dollars were made on these nine contracts. No reasonable explanation of this overpayment has been offered by the Kingdom of Norway.

The facts above stated suggest a perfectly reasonable explanation, viz: that the prices of these contracts were raised after they were made. If this explanation is not correct, what is the explanation?

Whatever the explanation, it is submitted that it should be known to the Norwegian Agent, and that he owes it to this honorable Tribunal, and to the United States, to lay it frankly before the Court. It is for Norway, not the United States, to clear this matter up.

Surely it will not be contended by Norway that the suggestion of these nine contracts may have been antedated, and that the prices named may have been raised, are irrelevant suggestions; mistaken they may be but they are not irrelevant on any theory. On the Norwegian theory that the contracts were requisitioned they go to the value of the contracts and the good faith of the claimants. On the theory of the United States that only physical property was taken they go to the good faith of the claimants. It is for the claimants affirmatively to show that they had no part in these "mistakes." The question of good or bad faith is always relevant. The Norwegian Counter-case quotes one maxim of technical Anglo-Saxon equity, namely, "equality is equity." The United States adds another, "he who seeks equity must come into court with clean hands."

"A stream can rise no higher than its source." The various infirmities attaching to these contracts which have been discussed obviously could have been enforced against Hannevig if he were claimant. The rule of law is well settled that the assignee can receive no better title than the assignor had, and that the principal debtor is entitled to the benefit of all defenses which existed against the assignor while the contracts were in his hands, as well as to any arising prior to receipt of notice of the assignment.

"An assignee takes 'subject to equities;' that is, subject to all such defenses as might have prevailed against the assignor. In other words the assignor cannot give a better title than he has got." Anson on Contracts, page 367.[1]

[1] See Anson on Contracts, 3d American copyright Edition, from 14th English Edition, pages 366 *et seq.*

3. Hannevig Knew the Requisition Situation.

Christopher Hannevig had perhaps better opportunities than any other man outside the United States Government service, to know the exact situation in the United States with regard to the requisition of ships under construction on August 3, 1917. In his various capacities as shipbuilder, ship owner and ship broker, he was repeatedly notified of the requisition orders and received in due course the subsequent communications from the Emergency Fleet Corporation.

As long as he was in the United States he kept in touch through personal visits and through the visits of his representatives with the officials of the Emergency Fleet Corporation. For instance A. C. Besselievre of the New Jersey Shipbuilding Corporation attended a shipbuilder's conference at the Shipping Board at Washington on August 7, 1917, at which the requisition order was explained by Admiral Bowles, and arrangements were made for cooperation between the Fleet Corporation and the shipbuilders in carrying out the requisition program.[1]

It is submitted that it is a very material circumstance affecting both the legal and equitable rights of the claimants that Christopher Hannevig, who it will be remembered owned eleven of these ships on August 3, the requisition date, and who subsequently purchased either two or all four of the remaining contracts, was so exceptionally well informed as respects the purpose and the practical operation of the requisition program of the United States. This knowledge on his part is relevant and the United States has a right to bring it to the attention of the Tribunal in the only way in which it can be brought, namely, by showing who Christopher Hannevig was, and what were his relations to the Christiania group of claims.

HANNEVIG'S CONTRACTS MADE FOR SALE OR REQUISITIONING, NOT FOR COMPLETION.

Nine of the fifteen contracts involved in this arbitration were tainted from their inception with the purposes and methods of Christoffer Hannevig. These were the five contracts with the Pusey & Jones Co., and the four with the New Jersey Shipbuilding Company.

These nine contracts were made to be sold or requisitioned, not to be transmuted into finished ships.

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[1] U. S. Counter-case, Appendix, pages 221–222.

As has been shown no one outside the United States Government was more keenly alive than Christoffer Hannevig to the conditions that made requisition by the government an assured fact long before it became a reality. Hannevig knew the weaknesses of his own corporate structures. He knew that it would be impossible for him ever to complete the plant of the New Jersey Shipbuilding Company, much less to complete the ships projected for this paper plant still oozing away in its virgin marsh.

To Hannevig this situation meant only an expansion of his opportunities. There would be a fortune for him if he could quickly make contracts, sell them at a profit if possible before requisition or have them on hand to be requisitioned if they could not be sold before hand.

Requisition to him did not mean the destruction of his properties, but the salvation of his quaking fortunes. It meant a great, rich government coming to take his paper yards and his paper ships, coming with millions of money for indemnity, coming to save him from the responsibility he could not meet for the completion of the contracts he had already sold.

So, Hannevig prepared for the golden harvest. Contracts were made at prices that then seemed high, but which as requisition approached, made Bullowa long to manipulate them into higher prices. Among the many contracts were the nine now before this Tribunal, all bearing dates of that time when the newspapers were filled with the prospects of requisition and when the requisition law was being put into the final shape in which it was enacted on June 15, 1917.

It is no mere coincidence that Hannevig was making contracts between his dummy corporations and his shipyards at that time. With only 4 keels laid out of his great program of construction and faced with his financial difficulties and the impossibility of procuring steel, it would have been the veriest folly for Hannevig to take on more contracts for *construction.*

Therefore, when Hannevig made 8 contracts with the New Jersey yard, allegedly under date of June 1, 1917, and six more with the Pusey & Jones yard, allegedly under date of June 12, 1917, it was with no intent to build and complete the 14 ships with his own resources.

In this way Hannevig with a few strokes of the pen on a few sheets of paper was able to meet requisition with fourteen contracts

which he could supplement with a few material orders and put forward as ships under construction.

MR. VETLESEN EXPLAINS.

An explanation of these contracts is offered in the Norwegian Counter Case in the form of a letter from G. Unger Vetlesen, A. M. I. N. A.—M. I. N. A. & M. E., who states that he was formerly "Assistant to the Managing Director of Pusey & Jones Company * * * and personally familiar with the facts." Presumably Mr. Vetlesen served as Assistant to Captain Hanssen when the latter was Managing Director of the Pusey & Jones Company, and his letter, probably, contains no news for the Norwegian Agent. Mr. Vetlesen explains that Mr. Hannevig "urged that his shipping companies should contract for as many ships as possible."[1]

Continuing Mr. Vetlesen says:

"Later on in 1917, the extension of those yards and the *starting of the New Jersey yard* made it possible to start the drawings and order the materials for more hulls. By this time the Emergency Fleet Corporation had come into being, *and Mr. Hannevig offered to it the contracts for the later Wilmington, Pennsylvania and New Jersey hulls. The corporation, however, declined to enter into these contracts. After failing to place the contracts in this way, Mr. Hannevig caused his shipping companies above named to take them. He then, acting as the agent of these companies, sold many of the contracts* which had not already been sold to the Cunard Company, to Norwegian Shipping Companies and individuals during the summer of 1917."[2]

Mr. Vetlesen's simple statement makes it clear enough that Hannevig never intended that his shipping companies should have the ships. The contracts were simply lodged temporarily in the names of these shipping companies.

Mr. Vetlesen perhaps unwittingly disclosed one of the motives of the sales in Norway. He said:

"It was regarded as an advantage in selling the contract to a foreign shipping company *that the contract was already owned*, and might remain in the legal ownership of an American corporation under foreign control."[3]

Here is a frank admission that one of the reasons for placing the contracts in the name of the Manss Steamship Company and

[1] Norwegian Counter-case, Appendix, page 111.
[2] Norwegian Counter-case, Appendix, pages 111–112. Italics ours.
[3] Norwegian Counter-case, Appendix, page 111. Italics ours.

the Bulk Oil Transports, Inc., was to establish an ostensible ownership, to make it appear that the contracts were "already owned" by an American Company.

4. Hannevig Financially Unable to Complete Shipyards, Much Less to Build Ships.

If Hannevig's character and peculiar opportunity for knowing the exact situation as regards the American requisition are relevant, so also is the financial status of Hannevig and his ship yards, where nine of the Christiana group ships were building, and it is necessary to tell the story of Hannevig in order to show this financial situation. This the United States has tried to do fairly from the original documents and, this it insists it has a right to do.

Surely it will not be seriously denied that the financial ability of a ship yard to complete a contract is relevant to the value of that contract. At least this can hardly be done on behalf of Norway consistently with the testimony of Mr. V. Reimann, one of Norway's expert witnesses, as to the value of the New Jersey contracts on account of the "great feeling of confidence in the ability of this yard to turn out satisfactory ships."[1]

Obviously if the yard was financially unable to proceed this confidence was misplaced, and the contracts were worthless.

Again to deny the relevancy of the financial strength of the shipbuilder would be in conflict with another expert from Norway, Mr. Frank S. Martin in the Brooks-Scanlon Case, where he testified that "the responsibility of the shipbuilder enters into the 'valuation of the contract,'"[2] and said that his testimony in that case was "based upon the belief and acceptance of the New York Shipbuilding Corporation as a perfectly solvent, going, reliable concern."[3]

It is submitted, therefore, that the finances of the various Hannevig companies are relevant to the issues before this honorable Tribunal.

The Norwegian Counter-case makes the positive denial that the Hannevig Shipbuilding Companies were financially unable to complete their contracts. The Counter-case states:

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[1] Norwegian Counter-case, page 146.
[2] U. S. Counter case, Appendix, page 308.
[3] U. S. Counter-case, Appendix, page 310.

"This is denied entirely. * * * Furthermore, the record is clear that the Pusey & Jones Company was financially able to perform its contracts."[1]

Just wherein the record is clear that the Pusey and Jones Company would have been able to carry out its contracts is not understood. The Pusey & Jones Company, as referred to in the Norwegian Counter-case, included the old Pusey & Jones Company with its plant at Wilmington, the Pennsylvania Shipbuilding Company, and the New Jersey Shipbuilding Company.

It was necessary for the United States through the Emergency Fleet Corporation to advance money to complete each and every one of the three shipyards later merged into the Pusey & Jones Company. Almost from the very beginning of its contact with the Hannevig shipbuilding companies the Emergency Fleet Corporation was assailed with demands for money to finance the completion of the plants and the construction of the ships. The Norwegian Counter-case says:

"The New Jersey Shipbuilding Company asked simply that the United States refrain from shutting off its steel supply. *It asked no other aid.*"[2]

Either this statement must be regarded as intended to be limited to the question of steel or it is wholly without foundation, as the following appeal for "aid," financial aid, made by the New Jersey Shipbuilding Company will demonstrate.

"1917 Dec. 19 PM 2 28
"Q New York, N. Y. 2P 19.

"C. W. Cuthell,
Attorney U. S. Shipping Board Emergency Fleet Corpn.,
Washington, D. C.

Referring to Mr. Bullowas letter to you we beg to say that New Jersey Shipbuilding Company report as follows Builders of additional material for the New Jersey Shipbuilding Company are on the verge of being stopped on account of nonpayment of bills now due We would greatly appreciate if you will let us know how soon we can expect sufficient money to cover accounts payable. Stop immediate action necessary in order avoid delay Please telegraph if you can arrange credit as suggested today obliging.

Christoffer Hannevig."[3]

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[1] Norwegian Counter-case, pages 98–99.
[2] Norwegian Counter-case, page 22. Italics ours.
[3] U. S. Case, Appendix, page 277.

It is true that on the occasion of his first call at the office of the Emergency Fleet Corporation Christoffer Hannevig left a card on which was a pencil memorandum which said among other things:

"Need no money."[4]

But that Hannevig did need money and needed it very badly was apparent long before requisition. In fact he wrote to the Fleet Corporation under date of May 4, 1917, and proclaimed the fact that unless he had the aid of the United States Shipping Board he would be unable to finance his new plant. The plant referred to was that of the New Jersey Shipbuilding Company. Mr. Hannevig said:

"My understanding has been that the United States Shipping Board will assist in getting tools, supplying material at Government prices, and I am going ahead on this presumption. *If this is not the case, I will be unable to finance the new plant, and we will be compelled to make other arrangements.*"[1]

The Fleet Corporation promised to supply steel at Government prices for use in constructing vessels, but stated that it could not ask for Government prices for steel to put into the construction of the yards.

Under date of May 19, 1917, Pusey & Jones Company wrote outlining the requirements for construction steel for its New Jersey Shipbuilding Company's plant, and the extension to the Pusey & Jones plant. The concluding paragraph was as follows:

"I shall appreciate very much if you can let me know promptly what you can do in the matter of assisting us in getting the material promptly and at Government prices."[2]

Again on May 26, 1917, the third of Hannevig's companies, the Pennsylvania Shipbuilding Company wrote the Fleet Corporation and appealed for help in procuring steel for the New Jersey Shipbuilding Company's plant. In this letter the Fleet Corporation was assured that the new plant was established with the idea of assisting the Government in furnishing ships. The letter said:

"* * * but find we are handicapped in securing material, especially steel for building, and the prices now asked are such that we are compelled to reduce our building program unless the Shipping Board is in position to obtain the steel material at figures somewhat nearer the prices paid by the Government, * * *"[3]

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[4] U. S. Case, Appendix, page 199.
[1] U. S. Case, Appendix, page 200. Italics ours.
[2] U. S. Case, Appendix, page 201.
[3] U. S. Case, Appendix, page 202.

These appeals for help in procuring steel are in sharp contrast with the statement in the Norwegian Counter-case to the following effect:

"The aid which the New Jersey Company sought from the Fleet Corporation was purely negative. The steel had all been contracted for at a price of about half the market price in October, 1917. The New Jersey Company was merely asking the Fleet Corporation not to interfere and take away its steel."[1]

It is unnecessary in discussing the financial condition of the Hannevig companies to differentiate the companies as they were all controlled by the same interests as is shown in the letter of May 26, 1917 from the Pennsylvania Shipbuilding Company, which said:

"You will kindly understand that this new shipyard is controlled by the same interests as the Pusey & Jones Company, of Wilmington, Delaware, and the Pennsylvania Shipbuilding Company, of Gloucester, N. J., * * *"[2]

APPEAL FOR MONEY DIRECTLY AFTER REQUISITIONING.

The financial ability of Hannevig to complete his three shipyards and carry out all the contracts which he had made may be judged by an appeal for help which was made by the Pusey & Jones Company under date of August 30, 1917, directly after the requisitioning of the ships. The opening paragraph of this letter was as follows:

"*We find ourselves at this time greatly in need of working capital.*"[3]

After telling of improvements and extensions already made, the letter said:

"The funds to take care of these improvements have been borrowed on the notes of the company. You can readily understand therefore that our borrowing capacity for working capital is very much handicapped. Further than this prior to the expansion of the plant the amount of business carried on the books normally was about one million dollars. At this time however we have contracts on our books aggregating approximately ten million dollars which you can of course understand require a considerably larger working capital. *We therefore respectfully request that on the eight vessels under contract between this company and the Cunard Steamship Company which have been requisitioned by your corporation you make the next two payments specified in these contracts in advance of the dates they will normally fall due as follows:* * * *

[1] Norwegian Counter-case, page 22.
[2] U. S. Case, Appendix, page 202.
[3] U. S. Case, Appendix, page 229. Italics ours.

"We make this request for the reason that a very large percentage of the material and considerable labor has to be paid for out of the first few payments received on each vessel."[4]

This appeal for financial aid was referred to Alvin C. Birdsall, the auditor of the third district, who under date of September 5, 1917, reported to George R. McDermott, District Officer of the Fleet Corporation. Mr. Birdsall's report showed that the request of the company to advance money before it was earned would result in advances of $234,000 in September and $300,000 in November and December. Mr. Birdsall said:

"The foregoing request is explained by the company as being made necessary by a lack of working capital. In examining this feature of the situation, I find that the company has passed two dividends on their preferred stock, and are carrying on their books as a liability $12,904.50, accrued dividend on this stock to June 30. There is at present a suit against the company by the holders of the stock, who seek to obtain the payment of this dividend."[1]

BIRDSALL LETTER MISINTERPRETED.

The Norwegian Counter-case quotes two paragraphs from Mr. Birdsall's report of September 5, 1917. It does not state that this report was based on an appeal for funds made as early as August 30, 1917, but gives the impression that it followed the beginning of correspondence on November 19, 1917. The Norwegian Counter-case says:

"The correspondence shows more than this. It shows statements made by officers of the Fleet Corporation to the effect that the company was sound financially and could have raised the necessary money itself. The following extracts are from a letter of Mr. Alvin C. Birdsall, the auditor for the Fleet Corporation for the third district:

"'Further, it was stated to me by Mr. Lee, Mr. Lynch and Mr. Nixon, Treasurer of the Delaware Trust Co., that the company could not only finance itself, if compelled to, but that such a matter could be arranged by them without great difficulty. It appears that Mr. Hannevig himself could finance the situation, to relieve which they appeal to us, were it not for his absence from this country.

"'In view of the foregoing, I have to report that, in my opinion, such advances as requested would be financially sound, providing the figures of inventory and progress were substantiated by competent engineering authority. The lack of freedom left to the company in its affairs might permit of its being forced into insolvency. It does

[4] U. S. Case, Appendix, pages 229–230. Italics ours.
[1] U. S. Case, Appendix, pages 234 at 235.

not appear that the financial stringency in which the company finds itself is beyond the ability of the officers to handle, nor is it outside the contingencies common in the conduct of business.'"[1]

It is submitted that Mr. Birdsall's letter did not say that the company was sound financially. What he did say was to report his opinion that the advances as requested would be *financially sound providing the figures of inventory and progress was substantiated by competent engineering authority.* Also Mr. Birdsall was not the authority for the statement that the company could have raised the necessary money itself. His letter shows that he was quoting Mr. Lee, Mr. Lynch and Mr. Nixon.

That Mr. Birdsall did not believe the Hannevig Companies were in sound financial condition is shown by a letter he wrote to Mr. McDermott three days after the one quoted from above. He started this letter as follows:

"It has occurred to me, in connection with Pusey & Jones, *that another solution for their financial troubles might be developed.*"[2]

Again, two days later, on September 10, 1917, Mr. Birdsall wrote to the General Auditor of the Fleet Corporation in regard to Pusey & Jones, and showed that they would have to place a mortgage, so to speak, on payments to become due in the future. Mr. Birdsall said:

"Their representative here today claims that *it will be necessary for them, in order to obtain the banking accommodations, to go to a bank and assign payments to become due in the future.*"[3]

ANOTHER APPEAL FOR HELP ON DECEMBER 17, 1917.

Hannevig's financial condition was disclosed by his righthand man, Ralph James M. Bullowa in a letter of December 17, 1917, to the Fleet Corporation. This letter was written with particular reference to the New Jersey Shipbuilding Company. It said:

"The situation briefly is this: Mr. Hannevig expected to be able to finance the completion of New Jersey through the sale of contracts to Norwegian buyers where the price would be $250 per ton. This source has been cut off by the action of the Emergency Fleet. It is also impossible to deal in new buildings or arrange any reasonable communications with his interests in Norway, and, therefore, Mr. Hannevig finds that certain of his financial resources for the

[1] Norwegian Counter-case, page 23.
[2] U. S. Case, Appendix, page 237. Italics ours.
[3] U. S. Case, Appendix, page 238. Italics ours.

present are dormant, and he does not wish to unduly tax with the present outlook his resources in this country.

"The position to-day is, therefore, with the New Jersey Shipbuilding Company, *they find themselves without funds for the reasons above stated.*

"In order not to delay the construction of the vessel it will, therefore, be necessary to find about one and one-half million dollars, which can be done in the following manner:"[1]

Mr. Bullowa then proposed a plan for the Fleet Corporation to establish an immediate credit for $700,000 and another credit of another $700,000 thirty days afterwards, these advance payments aggregating $1,400,000 to be applied against installments on eight of the contracts at the New Jersey yard, or "as a loan to the New Jersey Shipbuilding Company to be repaid on completion of the vessel." Two days later Christoffer Hannevig himself sent a telegraphic appeal which told that construction work for the New Jersey yard was on the verge of being stopped because of the nonpayment of bills then due.[2]

ANOTHER TELEGRAPHIC APPEAL FOR FINANCIAL AID ON DECEMBER 21, 1917.

On December 21, 1917, the New Jersey Shipbuilding Company itself sent a telegraphic appeal to the Emergency Fleet Corporation as follows:

"Phila pa dec 20.
645 P Dec 21, 1917–A. M.

Emergency Fleet Corpn.,
1319 F St., Washn., D. C.

"Pending negotiations between yourselves and Mr. Christoffer Hannevig all funds available for building our plant are practically exhausted and payments overdue for building steel and lumber stop deliveries are being stopped on material urgently needed to complete the plant and we are notifying you so that you may take such action as you may deem expedient and request you to kindly instruct us as to what you wish us to do.

New Jersey Shipbuilding Co.,
H. E. Norbom, Prest.
650 P"[3]

Officials of the Fleet Corporation realized that the condition of Hannevig's companies was so desperate financially that F. T. Bowles, Manager of the Steel Ship Division, authorized the comptroller of the Fleet Corporation to advance $100,000 to the New Jersey Ship-

[1] U. S. Case, Appendix, page 276. Italics ours.
[2] U. S. Case, Appendix, page 277.
[3] U. S. Case, Appendix, page 279.

building Company. This was on December 21, 1917. The authorization said:

"This money is urgently needed to prevent delay in delivery of materials."[1]

The same day Mr. Bowles notified the New Jersey Shipbuilding Company that he had arranged for the District Officer to advance $100,000 pending completion of negotiations.

PENNSYLVANIA SHIPBUILDING COMPANY SHOWS NEW JERSEY COMPANY'S FINANCIAL DIFFICULTIES.

As the New Jersey Shipbuilding Company and the Pennsylvania Shipbuilding Company were to all intents and purposes the same corporation it is not surprising that the Pennsylvania Shipbuilding Company answered Admiral Bowles' telegram of notification that $100,000 was to be advanced. The Pennsylvania Company's response of December 22, 1917, was as follows:

"Accept our thanks your telegram advising arrangements to advance one hundred thousand dollars. Our accounts payable December first and now overdue amounts to two hundred and fifty three thousand dollars and would appreciate your instructions relative to the balance."[2]

On the same date the New Jersey Shipbuilding Company wrote to the Fleet Corporation acknowledging the telegram from Admiral Bowles and making the New Jersey Company's identity with the Pennsylvania Company more certain by saying:

"In consideration of the fact that our accounts payable, on December 1, and now overdue, amount to $253,836.66, we have wired Admiral Bowles per copy enclosed herewith, and hope that you can arrange the transfer of the money so that we can draw upon it Monday morning."[3]

Admiral Bowles wrote to the New Jersey Shipbuilding Company on December 24, 1917, quoting the telegram of the Pennsylvania Shipbuilding Company and stating that the advance was made to the New Jersey Shipbuilding Company and not to the Pennsylvania Shipbuilding Company. Admiral Bowles said:

"The Corporation assumes that your telegram relates to the accounts payable of the New Jersey Shipbuilding Company."[4]

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[1] U. S. Case, Appendix, page 279.
[2] U. S. Case, Appendix, page 298.
[3] U. S. Case, Appendix, pages 298–299.
[4] U. S. Case, Appendix, page 299.

The New Jersey Shipbuilding Company replied by wire that the telegram relating to the check for $100,000 should have been signed by the New Jersey Shipbuilding Company. Therefore it may be assumed that it was the New Jersey Shipbuilding Company which had over $253,000 in accounts payable and overdue on December 22, 1917.

On December 26, 1917, the New Jersey Shipbuilding Company acting by the Pusey & Jones Company per Christoffer Hannevig, made a proposal for the completion of the 12 vessels under contract at the New Jersey yard. This proposal included the plan by which the Fleet Corporation was to deposit $500,000 in the Franklin National Bank of Philadelphia, this sum to be a revolving fund and to be kept at substantially that sum so long as the shipbuilding company fulfilled its agreement.[3]

The proposal of the New Jersey Shipbuilding Company was accepted by the Fleet Corporation and an arrangement was promptly made for the $500,000 special imprest account with the Franklin National Bank. The deposit was made on January 4, 1918.[4]

Previous to this time the Fleet Corporation had paid $250,000 to the Bulk Oil Transports, Inc. on the understanding that it was to be endorsed over to the New Jersey Shipbuilding Company. In view of this payment, Admiral Bowles notified the New Jersey Shipbuilding Company that it would not be necessary for that company to use any of the $100,000 fund in payment for plant and equipment.

NEW JERSEY SHIPBUILDING COMPANY STILL IN NEED.

On January 4, 1918, the date that the $500,000 imprest fund was established, the New Jersey Shipbuilding Company wired the Fleet Corporation as follows:

"We recently recd two hundred and fifty thousand dollars from Christoffer Hannevig for use in shipyard investment stop this money was used to cover portion of accounts payable stop plant will need over four hundred thousand dollars in January of which one half is pressing and urgently needed please wire if your arrangements with Mr. Hannevig allow of immediate release of this money."[1]

[3] U. S. Case, Appendix, page 300.
[4] See Hamell letter, U. S. Case, Appendix, page 307.
[1] U. S. Case, Appendix, page 306.

THE OLD PUSEY & JONES COMPANY IN NEED.

Hannevig's financial troubles were not alleviated to any great extent by the financial aid given by the Fleet Corporation. On January 12, 1918, he found it necessary to make another appeal to the Shipping Board. This appeal deserves to be printed here in full in view of the statements made in the Norwegian Counter-case.

"I have been speaking to several bankers with a view to getting money for the New Jersey Shipbuilding Company and The Pusey & Jones Company.

"On the New Jersey Shipbuilding Company I believe I have now spent about $2,000,000 and there will be another $1,000,000 before the plant is completed.

"Regarding The Pusey & Jones Company Wilmington plant, I paid about $1,000,000 for the plant and have spent about $1,150,000 in improvements, and there is still about $650,000 to be spent before the yard is complete.

"The replies I get from the bankers are that it is up to the Shipping Board to finance the yards. I shall, therefore, feel extremely obliged if you will kindly put me in a position to reply intelligently to these bankers, as I understand the position of the Shipping Board now is not to put up any money for the yards.

"Thanking you in anticipation, I am, dear sirs,

"Yours very truly,

Christoffer Hannevig."[2]

This letter certainly does not indicate that Hannevig or the Pusey & Jones Company would have been able to complete its plant and ships without aid.

Under date of January 11, 1918, the New Jersey Shipbuilding Company notified Hannevig of its serious financial need and listed items amounting to $458,000. Hannevig, instead of meeting this situation himself, transmitted the letter to the Fleet Corporation.[1]

$3,339,300.00 REQUIRED FOR HANNEVIG'S THREE PLANTS.

On March 8, 1918, the Fleet Corporation notified the Pusey & Jones Company that its application for financial assistance for completing the yards at Wilmington and at Gloucester New Jersey would be met with advance payments by the Fleet Corporation. This letter said:

"The advance will in no event exceed $4,000,000, but it is the intention of the Corporation to advance the cost of completing the fol-

[2] U. S. Case, Appendix, page 309–310.
[1] U. S. Case, Appendix, pages 310–311.

lowing improvements. We understand that the figures stated opposite each item are based on actual bids which you have had for the work."[1]

There followed a detailed statement of needs which is here summarized as follows:

1. Required for Wilmington plant of Pusey & Jones	$1,582,600
2. Required exclusively for plant of Pennsylvania Shipbuilding Company	442,500
3. Required exclusively for plant of New Jersey Shipbuilding Company	812,200
4. Required for Middle Yard to be used by both Pennsylvania Shipbuilding Company and New Jersey Shipbuilding Company	502,000
Total required	3,339,300

From this it appears that the 50 year old plant of Pusey & Jones required $1,582,600. It is evident from the foregoing that even this plant was not completed as a modern shipyard although V. Reimann expert for Norway talks of it as being an old company that had been building ships for more than 50 years, and Mr. G. Unger Vetlesen states that it had been in business since 1848 and had built 374 iron and steel vessels.

OVER $37,000,000 ADVANCED BY EMERGENCY FLEET CORPORATION IN LESS THAN 2 YEARS.

It is unnecessary to follow in detail the various advances made by the Fleet Corporation to Hannevig's three shipbuilding companies. It is sufficient to say that J. Mason comptroller of the Pusey & Jones Company, signed a statement as of July 11, 1919 showing that the company had received $37,023,058.41[2] from the Emergency Fleet Corporation. That this was not for work done alone but in excess of the value of work done is shown by the final figure in Mr. Mason's statement which was shown as follows:

"Total amount due the Emergency Fleet Corporation by Pusey & Jones Company, May 31, 1919, for plant advances, working capital and notes, $5,203,381.36."[3]

AN "INSANE" NEWS STORY.

It appears that sometime in May, 1918, a newspaper reporter saw Mr. Christoffer Hannevig, Sr., the Father of Christoffer Hannevig as he was leaving for Norway, and as a result of the conversation

[1] U. S. Case, Appendix, pages 314–316.
[2] U. S. Case, Appendix, page 335.
[3] U. S. Case, Appendix, page 336.

published a story that Christoffer Hannevig was to build a new shipbuilding plant. The Treasurer of the Pusey & Jones Company took this matter up with Mr. Hannevig and reported the results of his conversation as follows:

"When I put the question to Mr. Hannevig as to what truth there was in it he said that, *taking into consideration the fact that he did not have his present yards completed, and that money was so tight that he had to get loans from the Government to finance his work*, whoever had seriously written up this story must have been insane."[1]

Certainly these various evidences of the financial inability of Christoffer Hannevig to complete the yard, much less to complete the ships, do not bear out the statement in the Norwegian Counter Case that the record is clear that Pusey & Jones Company could have completed their contracts.

CONTRACT OWNERS WOULD HAVE LOST JUST AS HANNEVIG LOST THROUGH DEFAULT OF THE BUILDERS.

An interesting indication of what would have happened to the holders of these contracts if there had been no requisitioning is given by Charles Kimmich, representing Mr. Hannevig. Among these data is a statement showing losses sustained by Christoffer Hannevig and his companies in war work. The total loss is shown as $6,616,079.19.[2]

An examination of the exhibit supporting this summary of the losses sustained by Hannevig shows that they were largely on account of the contracts made with builders who could not make good on their contracts. One exhibit relates to a contract of the Sandstrom Shipbuilding Company for two 3,000 ton wooden motor ships to be built for the Hannevig Brothers. The exhibit shows that very shortly after the keel had been laid and the second payment made, the yard went into bankruptcy. Hannevig lost $154,800 as a result of this.

Another experience that Hannevig had was with the Leclair Shipbuilding Company of Canada. After the first two boats were practically ready for launching and the next two boats were partly planked, the yard was not able to proceed with the work on account of the fact that their cost would exceed the contract price and the

[1] U. S. Case, Appendix, page 322. Italics ours.
[2] U. S. Case, Appendix, page 354.

banks refused to finance them. Hannevig states that his loss on this transaction was $485,000.[1]

This was not the only loss suffered at this yard, as prior to the placing of the contract which was abandoned, Hannevig had placed another contract for 6 steel trawlers at a price of $160,000 per ship. The exhibit relating to this transaction says:

"At the signing of the armistice the real value of these ships were materially reduced, * * *

"We expect to obtain possession of these ships, but it will be impossible to get more than $100,000 per vessel. We have sustained a loss of $400,000 due to the fact that the market value has been reduced down to $100,000 per ship and the further fact that these vessels will cost more than $160,000 to complete per ship, which expense we will have to stand due to the insolvency of the firm, making in the aggregate a loss on this venture of approximately $400,000 and a total loss at this yard of approximately $900,000."[2]

Still another experience was with Rice Brothers, of East Boothbay, Maine, on a contract for 4 steel fishing trawlers for $200,000 per ship. The exhibit said:

"After we had paid over $285,000 toward the construction it clearly developed that the yard would be unable to proceed with the work at the contract price, or anywhere near such figure, because of mounting costs and increasing inefficiency. Rather than to proceed with this certain loss, we held up further payments. The yard is now in the hands of receivers, and there is no possibility of our obtaining the money which we have paid upon the ships, and as we stand at present we are out $285,000 with interest."[3]

WHAT HAPPENED TO ANOTHER HANNEVIG YARD WHICH THE FLEET CORPORATION DID NOT FINANCE.

As evidence of what would have happened to the New Jersey Shipbuilding Company's yard, it is interesting to note the exhibit relating to Mr. Hannevig's venture in the shipbuilding business in Newfoundland. The exhibit says:

"In the spring of 1917, Mr. Hannevig started the building of a wooden-ship building yard at Harbor Grace, Newfoundland. The outlays for the yard itself and materials for shipping construction amounted to a little over $900,000.

"*This yard, like all other wooden-ship building yards, proved to be a failure, and in liquidation of the assets, which are now practically completed, we show a loss of upward of $600,000.*"[4]

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[1] U. S. Case, Appendix, page 356.
[2] U. S. Case, Appendix, pages 356–357.
[3] U. S. Case, Appendix, page 357.
[4] U. S. Case, Appendix, page 359. Italics ours.

ANOTHER YARD THAT FAILED BECAUSE HANNEVIG COULD NOT MAKE GOOD.

Exhibit No. 10 relates to the yard which Hannevig tried to build and operate at Toronto, Canada. The exhibit says:

"In the early part of 1917 Mr. Hannevig placed a contract with the Thor Iron Works, of Toronto, Canada, for the construction of two 4,300 steel ships.

"The yard was unable to proceed with the construction of these vessels due to their financial condition, and the situation was that we had to take over the yard and complete the vessels ourselves at our own expense.

"We found ourselves with this property on our hands, and due to certain encouragements from the Canadian Government we undertook to make large improvements and with the view of constructing vessels on a substantially large scale. * * *

"It was necessary for us to go to large expenses in enlarging the yard, and the heavy financial drain necessary for the payment towards the construction of the ships was a very serious matter. By reason of the fact that the world supply of these small type of vessels was excessive, the prices dropped below the actual construction cost. The extensions to the yard were made in the midst of the most intensive war conditions, at top prices. The total investment cost us approximately $1,600,000, and the actual value would not net us more than half of our expenditures, thereby entailing a loss of over $800,000."[3]

It is interesting to note that the type of vessel referred to was the same tonnage as the Pusey & Jones vessels, but in this case Hannevig was frank enough to state that the world supply of this small type of vessel was excessive.

5. The Community of Interest of Hannevig Companies.

Finally it will not be denied that the effective date of the requisition of the New Jersey ships is one of the issues before the tribunal. The United States has contended that in accordance with the principles of law and equity the New Jersey Shipbuilding Company had notice of the requisition order on August 3, 1917.

The soundness of this position depends on the demonstration made by the United States of the absolute identity of interest between Hannevig and his "controlled companies", namely, Pusey & Jones Company, Pennsylvania Shipbuilding Company, New Jersey Shipbuilding Company, Bulk Oil Transports, Inc., and The Manss Steamship Company.

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[3] U. S. Case, Appendix, pages 359–360.

The United States maintains that this identity has been completely established, and in fact it is submitted that it has not been questioned by Norway.[1]

But again in order to establish this identity it was necessary to tell the story of Hannevig and once more it is respectfully, but emphatically contended, that the United States had a right to tell this story and that it was, and is, relevant to the issues before this honorable Tribunal.

III. Norway's Claims Speculative—"The Purchase of a Chance."

Norway denies the charge that the claimants in these cases were speculating, first, on the world's desperate need for tonnage, or second upon their chance of obtaining a relaxation of the American requisition order, or failing that, upon the amount of the claims for damages which they could pile up against the United States. The Norwegian Counter-case attributes the persistence of the representatives of the United States in this charge of speculation to their American provincialism—their "unfamiliarity" with "the practice common in Europe of making contracts with brokers which were then sold by them to the shipping companies who actually used the ships." It is somewhat inconsistently said, first that this was not the American practice, and second, that it "is merely the usual practice of ship brokers all over the world."[2]

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[1] U. S. Case, pages 65–66.

[2] The passage from the Norwegian Counter-case thus summarized reads as follows:

"He found the American shipyards unfamiliar with the practice, common in Europe, of making contracts with brokers which were then sold by them to the shipping companies who actually used the ships. The American practice had always been to deal directly with the shipowner, a practice which inevitably resulted in great irregularity of building since work was not started on a vessel until the ultimate purchaser came into direct relationship with the yard.

"This method of doing business is referred to because it appears to form the basis of the criticism made of all the Norwegian shipowners. The Case of the United States refers to Mr. Hannevig's activities as speculative, using the word to connote moral disapprobation. Mr. Gillen, before the Congressional Committee, said: "These Norwegians would place these contracts here in Amereica. They would take them over to Norway and gamble on them." What is here called speculation and gambling is merely the usual practice of shipbrokers all over the world. It is the method by which the entire cereal and cotton crops of the United States are disposed of every year. It is the method by which nine-tenths of its real estate development takes place. True, in certain sections of the press of that country and according to certain social theories, all these transactions are considered nefarious. But we doubt whether they are so regarded by the representatives of the United States in this proceeding. The probability is rather that these charges result merely from unfamiliarity with this phase of the ship brokerage business." Norwegian Counter-case, page 15.

Being at liberty to take its choice of these assertions the United States elects with the facts and agrees with Norway that "the American practice had always been to deal directly with the ship-owners."[2]

This election, however, naturally does not bind the United States to accept the contradictory proposition that the practices of Hannevig and his associates were in accordance with "the usual practice of ship-brokers all over the world." It is respectfully suggested that in view of the persistent provincialism of the "officials of the United States in charge of its shipbuilding activities,"[2] which had been continued in the Case of the United States as the Norwegian Counter-case specifically notes,[2] it would have been well for the representatives of Norway to support their assertions as to the general practice by evidence, instead of asking the Tribunal, as it were, to take judicial notice of the accuracy of their contentions. It would have been very interesting for instance had one of the Norwegian experts testified that it was in accordance with a normal and customary practice for Christoffer Hannevig to hawk about the contracts for the construction of the "*Lake Shawano*," Claim I, and the "*Lake Lida*," Claim II, as he did, first taking a brokerage contract on a sale to himself, then selling and buying and selling each of these vessels in quick succession until they had been owned and sold by him four times, three times personally and once as Christoffer Hannevig, A/S, the transfers being made at constantly increasing prices, with the result that the claimants are now asking $2,056,440.48 on account of vessels contracted for at $280,000 each.

Again it would have been in point had a Norwegian expert testified that it was a common phenomenon for a broker to buy a shipyard, to build two others, to consolidate all three, to organize operating companies, to make contracts between himself, his operating companies and his shipyards, and then to proceed to trade in these contracts and promote companies to take them over, which companies in turn had "arrangements" with other operating companies owned by the same broker.

Turning to a slightly different aspect of the general topic of speculation it would have been in point for Norway to submit evidence

[2] Norwegian Counter-case, page 15.
[1] Norwegian Counter-case, page 26.

that it was not indicative of speculation but illustrative of an every day happening for Mr. Fronsdahl to sell a ship contract "to Mr. Boe at $240. per ton at the rate of exchange of 3.45 crowns to the dollar" on June 13th, and on the following day to act again as broker "in selling the same contract from Mr. Sigurd W. Boe to Mr. K. S. Nordgreen for a price of $261. per ton at the exchange rate of 3.41 crowns per dollar," without apparently a scrap of paper to evidence the transaction.[1]

And while on the general subject of speculation the expert might have explained how it happens that the claimants who are represented as having been so desirous of getting and keeping the particular vessels which are the subject of their respective claims, showed so little effective desire to retain other vessels formally held by them and latter transferred to other claimants. Did the claimant's desire to get and keep real ships only attach to the vessel which they were unfortunate enough to have on their hands when this particular speculative mania came to an end?

For example, we find Mr. Jens Bing, who is the Manager of the Baltimore Steamship Company, claimant No. 3, purchasing from the Manss Steamship Corporation (through Hannevig, A/S, as brokers), on August 29, 1917, the contract for Hull 204 at the New Jersey Shipbuilding Company, at $210.00 per ton, paying for it on September 4, 1917, authorizing Hannevig, A/S, as brokers, "in the first half of September, 1917," to resell it for him at $255.00 per ton, selling it on September 14, 1917, at $255.00 per ton to E. & N. Chr. Evensen, Claimant No. 15, and giving an assignment therefor on October 2, 1917.

Again, we find Mr. Karl A. Thorbjornsen, who is the Manager of the Sorlandske Lloyd Corporation, claimant No. 5 and No. 12 (a company in which Mr. Harry Borthen, Claimant No. 14, Mr. Hannevig, and Mr. Jens Bing, Manager of the Baltimore Steamship Company, Claimant No. 3, were associated), purchasing from the Manss Steamship Corporation on August 30, 1917, the contracts for Hulls 203 and 205 at the New Jersey Shipbuilding Company, at $210.00 per ton, and selling the latter at $260.07 per ton, to Mr. H. Kjerschow, Claimant No. 13, on October 1, 1917.

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[1] See Exhibit 1 of Captain Hanssen's Brief, U. S. Case, Appendix, page 684. Also see U. S. Case, page 74.

Further, we find Mr. Tryggve Sagen, who is the Manager of the Ostlandet Steamship Company, claimant No. 6 (a company in which Mr. Harry Borthen, Claimant No. 14, was a director) purchasing from Christoffer Hannevig on September 8, 1917, the contracts for Hulls 1013 and 1014 at the Pusey & Jones Company, at $235.00 per ton, and selling them both at $266.04 per ton, to the Haug Steamship Company and Lars Maeland (for the Mercator Corporation), claimants No. 10 and 11, respectively, on October 1, 1917. Mr. Sagen, it will be recalled, was chairman of the Christiania Group of Norwegian Shipowners.

It would seem that Mr. Hannevig was not the only person in Norway who was in the business of buying contracts to sell instead of ships to sail.

It is submitted that the whole record in this case is filled with evidence of speculative intent on the part of these claimants. But fortunately the United States is not compelled to ask this honorable Tribunal to take its unsupported judgment on this record. Substantially the identical record has been passed upon by the highest court of the Kingdom of Norway and the verdict of that court is epitomized fairly and completely by the phrase which heads this section of the Argument of the United States, "The Purchase of a Chance."

CLAIMANTS BOUGHT THEIR "CHANCES" WITH WIDE OPEN EYES.

The courts of Norway have already determined in deliberate judgments that the claimants engaged in their speculative hazards with eyes fully opened to the facts of requisition. The general knowledge in Norway of the requisition and its effects is best illustrated in the language of the Christiania Court in its judgment upon a similar speculation in a ship contract. The Court said:

"If we consider the circumstances prevailing in the present case, I cannot see but that the plaintiff, in purchasing the contract, assumed the risk connected therewith. * * *

"The Navigation Journal had previously contained various reports of the requisition, for instance, on August 17, 1917, it published a telegram from New York from Shipowner Meling and Attorney Haight who was looking after Norwegian interests. *After a conference with the authorities at Washington, they telegraphed that there really was no prospect of having the requisitioned new ships transferred to Norwegian Register. However, it* was added: 'that the requisition does not necessarily mean that the ships have been lost to Norwegian owners forever.'

"As the plaintiff admitted this (Cf. his statement in this regard on page 7 of his argument), *I cannot see but that he must have been fully aware on September 20, 1917, that the requisition of August 3, 1917, was a requisition or seizure for possession (ownership) or would be upheld as such.* The Norwegian representatives in America worked to have the requisition not be for possession, *but according to the telegram in the Navigation Journal of August 17, 1917, the prospects for this do not seem to have been very bright.*"[1]

The Christiania Court in its judgment continued as follows:

"When the plaintiff bought the building contract, the Emergency Fleet Corporation itself had paid the seventh instalment to the constructors. (See deed of transfer, 3 ad 2, at end), which would seem to indicate that it had expropriated the new ship and the contract as its own property; but even if it had not been settled as to whether the seizure was an expropriation for use or for possession, nevertheless, as said before, the parties must have been fully aware of the latter condition on September 20, 1917. In spite of this, the plaintiff bought the contract. In so doing, he assumed the risks and chance."[2]

b. THE DECISION OF NORWAY'S HIGHEST COURT.

The Supreme Court of Norway, after due deliberation, has given its judgment on this same question. That high court said:

"With regard to the first point, of which the Counter appellant thus must be presumed to have no knowledge, *it is clear in my opinion that he must have had full knowledge that, if the decree was carried out to the extent allowed to the President of the United States and through him to the Shipping Board, it would deprive the holders of the newbuilding contracts concerned of all claims for delivery according to contract.*"[3]

NOTHING TO BUY EXCEPT CLAIM FOR INDEMNITY.

It is unnecessary for the United States to assert that in the purchase of contracts after August 3, 1917, there was nothing to buy but an indemnity claim. That obvious fact has been emphasized by the courts of Norway.

CONTRACT NOT REQUISITIONED, BUT POSSIBILITY OF SECURING SHIPS ABOLISHED.

The judgment of the Town Court in the Bestum II Case states the situation as follows:

"*It is not true, as intimated by the defendant that any support can be found in the information at hand to warrant the assumption*

[1] B. Stolt-Nielsen vs. Bjorn Bjornstad and Company, (U. S. Counter-case, Appendix, page 386 and 387. Italics ours.)

[2] U. S. Counter-case, Appendix, page 387.

[3] See judgment Bestum II case, U. S. Counter-case Appendix, page 401. Italics ours.

that the order of August 3, 1917, is merely a provisional measure which was either followed or supposed to be followed by a subsequent and final order. * * * The contract was not acquired in such a manner that the American Government assumed outright the rights and obligations thereunder in the same manner as the person to whom the contract might have been assigned under a general voluntary assignment. For the contract with its various stipulations did not exactly answer that which was aimed at by requisition. *That which took place, on the contrary, was that the government, in its own interest, seized the productive facilities of the yard while at the same time setting aside the contract for new ships concluded by the yard.* In our opinion this is the purport of the telegram from the Shipping Board Emergency Fleet Corporation when it states in regard to the new-ship in question:

"'*Contract not requisitioned, ships and material requisitioned.*'

"*It must furthermore be assumed that the seizure not only implied a postponement of the delivery date under the contract, but that it was entirely abolished.* * * * *

"The effect of this requisition was particularly expressed by the fact that the American Government promised compensation upon serving notice of the seizure, *which compensation first of all implied a refundment of what the contractor had paid under the contract, all of which seems incompatible with the opposition that the contract was to continue to stand.* * * * *

According to the foregoing it must be assumed that every obligation devolving upon the Chester Shipbuilding Company under the new-ship contract in question disappears in view of the above mentioned requisition order of August 3, 1917, *and that the only thing that remained of the contract was a claim for indemnity against the American Government in favor of the person to whom the shipyard had obligated itself by means of the contract or else the successors of that person.*"[1]

The judgment of the Supreme Court on the appeal from the decision of the Town Court, said:

"After what then happened *it is evident that the disputed shipbuilding contract must be considered as annulled* between the counter appellant and the works."[2]

THE CLAIMANTS BOUGHT ONLY A "CHANCE."

In considering what the claimants acquired in the transactions leading up to these claims, it is again unnecessary for the United States to characterize or identify the thing purchased. The highest court in Norway has already classified and characterized the object of the assignments.

In the Bestum II case the Supreme Court said:

"*The agreement should then be considered as a 'purchase of a chance.'* * * * *; the counter appellant has received what he bought.*[1]

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[1] U. S. Counter-case, Appendix, page 406. Italics ours.
[2] U. S. Counter-case, Appendix, page 400. Italics ours.
[1] U. S. Counter-case, Appendix, pages 401–402. Italics ours.

The following extracts are from the judgment of the Christiania Court in the case of B. Stolt-Nielsen vs Bjorn Bjornstad & Co., in characterization of the purchase of a ship contract:

"I cannot but see that the plaintiff in purchasing the contract assumed the risks therewith."

* * * * *

"In so doing he assumed the risks and chances."

* * * * *

"There was also the *chance* that the idemnity might be high."

* * * * *

"In taking these various *chances* the plaintiff made a speculation and assumed the risk."[1]

BIG INDEMNITY FROM AMERICA ONE MOTIVE.

The motives of the speculators in acquiring the ship contracts are plainly exposed by the Christiania Court in the judgment under discussion. The Court said:

"The chances consisted in the fact that the United States *might possibly agree to allow the seizure to remain* for use only, or to allow the owners of the contract to obtain the ships after the war. *There was also the chance that the indemnity might be high.*"[2]

HOPED FOR INDEMNITY OF 1,100 CROWNS PER TON.

The court even used figures to give a financial measure to the high hopes of the speculators for a large indemnity from the United States. The Court said:

"In this connection, the defendant states in document 8, pages 3–4: '*The hope was entertained at that time that an indemnity for the expropriation might be obtained from America to an amount as high as 1,100 crowns per ton for a contract with so favorable a delivery date as the new-ship contract in question. It was therefore a risky but not an unreasonable business.*'"[2]

THE SUPREME COURT OF NORWAY GIVES THE MOTIVE OF TRANSACTIONS.

The Supreme Court of Norway has described the motive in the transactions leading to the claims. In the Bestum II case, the Supreme Court said:

"On the contrary I am led to assume that the main point in the considerations which led to his purchase, was not what was the exact significance of the requisitioning decree of Aug. 3rd, but the estimate of various possibilities which were offered as far as the final American arrangement was concerned regarding the newbuilding which

[1] U. S. Counter-case, Appendix, pages 386–387. Italics ours.
[2] U. S. Counter-case, Appendix, page 387. Italics ours.

was the object of the transaction. *Seen in the light of the facts well known to the parties at the time of the purchase these possibilities gave wide scope for speculation in the final settlement of the affair.* * * *

"* * * And as far as I can see there was fully within what a practical estimate might consider as an obtainable result, a possibility that such a purchase would gain a profit for the purchaser which would compensate his risk, viz; the possibility that the decree would be for use during the war or for a short period afterwards, *or that the 'just compensation' promised would be fixed generously enough,—or of effectuating a sale to a third party before the reading of the decree was finally determined. According to all the evidence in the case I consider it the most probable understanding of the purchase concluded between the parties that it had for its object a matter of speculation of this character. The agreement should then be considered as a 'purchase of a chance.'* Its object is what profit could be made by the new building contract in question, *a contract with a weak point*, of which it was to be hoped that it would not make the purchase impossible, *but which on the other hand gave every reason for fearing the contrary.*"[1]

BACKGROUND OF TRANSACTIONS SHOWN BY NORWEGIAN COURTS.

The United States is indebted to the courts of the Kingdom of Norway for presenting so clearly and forcefully the background and the purpose of the transactions under which the present claimants acquired their claims. The appendix to the United States Counter Case carries translations of Court judgments which lay down certain facts and express certain opinions from which the conclusions drawn may be summarized as follows:

1. Contracts were not requisitioned, but only ships and materials were taken.[2]

2. That the ships had been requisitioned was fully known to all parties.[3]

3. That after August 17, 1917, shipowners should have been fully aware that the requisition of August 3, 1917, was a seizure for possession or title.[4]

4. That shipowners must have had full knowledge that the requisition if carried out to the extent allowed by law, would deprive all contract owners of claims for delivery according to contract.[5]

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[1] U. S. Counter-case, Appendix, pages 401–402. Italics ours.
[2] U. S. Counter-case, Appendix, page 405.
[3] U. S. Counter-case, Appendix, pages 386 and 400.
[4] U. S. Counter-case, Appendix, page 387.
[5] U. S. Counter-case, Appendix, page 401.

5. That, while contracts were not requisitioned, they ceased to exist on August 3, 1917.[1]

6. That the very language of the requisition order of August 3, 1917, seems incompatible with the supposition that the contract was to stand.[1]

7. That the language of the requisition order in promising just compensation implied first of all a refundment of progress payments made.[1]

9. That the purchases were speculations into which the purchaser entered with open eyes, assuming all risks and hazards.[2]

10. That the purchasers engaged in the speculations in spite of their full knowledge of the facts.[3]

11. That the purchasers in the transaction purchased only a "chance."[4]

12. That the motive of the speculators was largely to get big indemnities from the United States or to unload the contracts on another party before settlement with the United States.[5]

13. That in buying their chances the purchaser received what they bought.[6]

The language of the Norwegian courts makes the foregoing conclusions inevitable.

a. SPECULATION WITH A HANNEVIG PLUS HANDLES-BANK GUARANTEE.

But the record in this case shows not merely that the claimants were engaged in wild speculation, it shows that in nearly half of the cases they were engaged in a guaranteed speculation. Unfortunately, however, the guarantor was usually Christoffer Hannevig. Hence it is necessary, in spite of their thoroughly justified precautions, for them to fall back upon the United States for reimbursement. The guarantees referred to are found in the record of at least seven of the claims, and of course it is impossible to tell in how many more cases these guarantees existed of which the United States

[1] U. S. Counter-case, Appendix, page 405.
[2] U. S. Counter-case, Appendix, pages 386–387.
[3] U. S. Counter-case, Appendix, page 387.
[4] U. S. Counter-case, Appendix, pages 401–402.
[5] U. S. Counter-case, Appendix, pages 387 and 401.
[6] U. S. Counter-case, Appendix, page 402.

has no knowledge and has been able to obtain no evidence. The claims referred to are Claims 1, 2, 4, 8, 9, 10, and 11, and the guarantees are as follows:

Claims 1–2.

"In this connection, rights were reserved with respect to the seller of the contracts of the company, Mr. Christoffer Hannevig for annulment of the purchase and a demand for repayment of the purchase sum and indemnity for the company's loss. Mr. Hannevig has not been willing to acknowledge the justification of this, for which reason steps have been taken to have the question decided by court." [1]

Claim 4.

"Document No. 6, "Receipt by Hannevig A/S, dated September 27, 1917, Norwegian Case, Documentary Evidence, shown in the total of Kr. 6,281,953.56 a "1% guarantee commission." Possibly there has been no recourse on this, since those whose "joint account" was charged with the purchase sum, include "Christoffer Hannevig."

Claim 8.

On Sept. 5, 1917 Christoffer Hannevig Inc. wrote to C. K. Christoffersen Drammen, (who represents Tromp Inc.) as follows:

"* * *

"You furthermore reserve the following rights:

"If the ship is not delivered within two years after the transfer of the contract the purchaser is to be repaid the amount paid in together with accrued interest at 4%.

"In case the ship is requisitioned by the American Government and the indemnity does not cover the amount paid in by Tromp, Inc., Mr. Hannevig guarantees to make up the difference."

* * *

"On September 25, 1917, the Norwegian Commercial Bank, Inc., wrote to Tromp, Inc.

"Christoffer Hannevig. In connection with the purchase * * * we guarantee:

"On account of Christoffer Hannevig, Inc., of this place:

"1. * * * and 2. * * * This guarantee shall remain in force until Oct. 1, 1919." [2]

Claim 9.

"* * * Mr. Hannevig gives bank guarantee for the following:

"1. If the boat is not delivered within two years from the transfer of this contract, the buyers shall have the right to demand the paid-up installments and moneys, carrying an interest at 4% per year.

"2. If the boat shall be requisitioned by the American Government and the compensation does not cover the paid-up installments

[1] Annual Report, Manitowoc Shipping Company, 1918. U. S. Counter-case, Appendix, page 351 at 352.

[2] A/S Tromp v. Den Norske Handelsbank, U. S. Counter-case, Appendix, page 392.

and moneys paid by the buyer, the difference shall be covered by Mr. Hannevig, carrying an interest as above."[1]

Claim 10.

Document No. 3, assignment from Christoffer Hannevig to Tryggve Sagen with endorsement to Haug S. S. Co., dated September 8, 1917, states:

"* * * Mr. Hannevig shall have the right to cancel this purchase if he has not received within this time limit the approbation of the documents and the payments as aforesaid [i. e., by October 1]. * * * If the ship is not ready from the shipyard on the 1st August, 1919, Mr. Sagen has the right to cancel the purchase and demand all payments returned on the same date, with an interest of 5 per cent. per annum, to be calculated from the respective dates of payments made.

"In case the ships is requisitioned by the American Government, and the compensation does not cover the payments made by the Purchaser, the difference including interest shall be covered by Mr. Hannevig. * * *"[2]

Claim 11.

Document No. 3, assignment from Christoffer Hannevig to Tryggve Sagen with endorsement to Mercator S. S. Co., dated September 8, 1917, states:

[Identic provisions as above, in claim 10.][3]

IV. A Conspicuous Failure of Competent Evidence.

The Norwegian Case is conspicuously lacking in competent evidence to support the claims or even to show that the disbursements alleged were made. There are unsworn bank statements, unsworn statements of claimants and unsworn statements from Christoffer Hannevig. On some cases even these inadequate attempts to produce evidence are wanting.

Contemporaneous documents are marked by their scarcity. Nearly all the documents on which the claims rely were obviously prepared long after the event and unquestionably for the purpose of the claim.

a. AN UNSWORN STATEMENT BY HANNEVIG TO REFUTE A CONTEMPORANEOUS DOCUMENT.

It is typical of the evidence produced that Norway relies upon an unsworn statement by Christoffer Hannevig to repudiate a contemporaneous record. The contract for Hull No. 95 shows on its face that

[1] Letter from Christoffer Hannevig, A/S. Document No. 3, November 5, 1917. Norwegian Case, Documentary Evidence, page 261.

[2] Norwegian Case, Documentary Evidence, pages 267–268.

[3] Norwegian Case, Documentary Evidence, pages 263–264.

it was assigned to Christoffer Hannevig on September 18, 1917. Now, Norway produces a letter from Hanniveg *dated August 22, 1919*, to prove that the assignment of September 18, 1917 was an error and really never occurred. With a bland indifference to the contemporaneous document showing that the assignment was made, Hannevig explains that it was an error and that neither he nor Christoffer Hannevig A/S ever owned the contract.[1]

In similar fashion, the Norwegian Case presents an unsworn statement of the claimants under claim No. 4 to show that there, also, the contemporaneous evidence is wrong.[2]

b. NO EVIDENCE OF PAYMENT IN CLAIM 7 IN THE NORWEGIAN CASE.

It is literally true to say that the Kingdom of Norway came before this honorable Tribunal saying in its Case that "upon the evidence and documents set forth in Case and in the accompanying Volume of Documentary Evidence,"[3] it was entitled to receive $209,850.03 on claim 7 by way of reimbursement without producing any single document which, "by any stretch of the meaning of the word,"[4] could be called evidence that one cent had been paid out by claimants, unless it be the following: (1) the unsworn statement of the claimant: "However, I got my bankers to lay out the cash instalment on the purchase sum $365,400 and as security I deposited in the bank bankbooks and other documents of value,"[5] and (2) the comforting declaration of A. H. Whan & Company that they "have examined properly executed vouchers supporting payments made by individual claimants to assignors of contracts, and certify that, in our [their] opinion, the amounts shown above are correct."[6]

It is presumed that the Kingdom of Norway is not intending to ask the United States, much less this honorable Tribunal, to accept the mere statement of the claimant or the "opinion" of A. H. Whan & Company as to whether claimants have or have not made payments as alleged. Apparently, it has since occurred to the claimants that something by way of evidence on their part would be a gracious con-

[1] Norwegian Case, Documentary Evidence, page 185.
[2] Norwegian Case, Documentary Evidence, page 200.
[3] Norwegian Case, page 267.
[4] Norwegian Counter-case, page 59.
[5] Norwegian Case, page 217.
[6] Norwegian Case, Table facing page 161.

cession to the amenities of legal procedure, and accordingly in the Counter-case of Norway we find an "advice of debit" by the National City Bank of New York which shows that on September 12, 1917, the Bank debited the Agdesidens Bank of Arendal, Norway, with $365,400.00, in favor of Christoffer Hannevig, Inc., of New York. This is a piece of contemporaneous evidence of payment unique it is believed in this respect in the Norwegian documents, to show that the Agdesidens Bank paid Christoffer Hannevig, Inc., the sum in question on the date in question. But it is submitted that there is nothing except the caption "Documentary Evidence of Payments Omitted in the Case,—Claim No. 7," and the coincidence of the amount and the date under which this document is printed to show that this payment was from Prebensen or on account of the assignment of hull No. 1010. It is submitted that an inference from a coincidence is not sufficient to take the place of evidence which might perfectly easily have been furnished if this transaction took place as alleged, and that it would be hard to suggest a better way to discredit arbitration as a method of settling international disputes than to allow the Kingdom of Norway to recover over two hundred thousand dollars on this evidence, or rather on this absence of any evidence which would be accepted as sufficient in any municipal court in any country. While the difficulty or impossibility of producing the *best* evidence would justify a resort to secondary evidence, it is not believed that the mere existence of such a difficulty or impossibility would warrant the assumption of a fact in the absence of any proof whatsoever.

c. NORWEGIAN CLAIMANTS UNDERSTOOD THAT PROPER EVIDENCE OF PAYMENT SHOULD BE OFFERED.

The failure of the Norwegian claimants to produce proper evidence was not due to ignorance of the customary requirements. In fact, the record before this Tribunal shows that their representatives, in preparing the claims, understood that they would be required to produce satisfactory legal evidence.

As originally presented by Captain C. Frolich Hanssen under date of November 5, 1919, the claims were accompanied by certain sworn statements of the claimants.[1]

[1] See Prior Presentations, U. S. Counter-case, Appendix, page 246, particularly pages 263–267.

The sworn statements had been prepared on blank forms which the representative of the claimant had used to procure a uniform statement of claims. These forms provided twelve separate places to show *cancelled* checks, bank statements, and receipts. These particular blanks were to be used in presenting evidence under four different heads, as follows:

1. Payment of assignment price.
2. Payment of organization expenses.
3. Payment of travelling and other expenses.
4. Payment of cost of procuring funds to finance the contracts.

The blanks provided were as faollows:[1]

1. Payment of assignment price:

"As evidence of the said sum of $ . . . . there is attached hereto:

"A. Cancelled checks of A/S . . . . to . . . . marked Exhibits . . .

"B. Statement of . . . . bank, marked Exhibit . . .

"C. Receipt from . . . . marked Exhibit . . ."

2. Payment of organization expenses:

"A. Cancelled checks showing said expenditures, marked Exhibit . . .

"B. Bank statement showing said expenditures, marked Exhibit . . .

"C. Receipts showing said expenditures, marked Exhibit . . ."

3. Payment of travelling and other expenses:

"As evidence of the foregoing are attached hereto:

"1. Cancelled checks showing said expenditures, marked Exhibit . . .

"2. Bank statement showing said expenditures, marked Exhibit . . .

"3. Receipts showing said expenditures, marked Exhibit . . ."

4. Payment of cost of procuring funds to finance the contracts:

"These expenses are shown by:

"1. Cancelled checks attached hereto marked Exhibit . . .

"2. Bank statement attached hereto marked Exhibit . . .

"3. Receipts attached hereto marked Exhibit . . ."

It is significant that, after all this careful preparation to produce the customary proof of payment, *not a single cancelled check was offered.* The blank spaces were left blank in some cases, but in most cases were ruled out with a pen.

[1] Extract from typical affidavit of K. Th. Einersen, U. S. Counter-case, Appendix, pages 270–273, which is substantially as above.

d. THE UNITED STATES HAS SOUGHT TO SUPPLY DEFICIENCIES.

Strange as it may seem the evidence offered in support of the individual Norwegian claims in the Norwegian Case and Counter-case is in many respects less complete, and it is submitted with deference from the point of view of anyone endeavoring to learn the exact facts, less satisfactory than the evidence as presented by Capt. Hannsen in 1919. Various documents more or less contemporaneous and more or less specific which were then submitted have now been left out in the formal presentation of Norway's Case, and in their place have been substituted long and virtuous statements by the various claimants which are more illuminating, consciously or unconsciously, of the mental processes of the claimants than of the objective facts of the case.

The United States has done its best to supply these deficiencies by printing in its Case and Counter-case such parts of Captain Hannsen's evidence which was submitted in English as have been found and which have not been printed by Norway. Unfortunately the evidence submitted by him as respects the last nine claims has not been found. Doubtless, however, the Agent of Norway will be glad to supply this deficiency if requested by the Tribunal.

V. Discrepancies in the Evidence Presented—Prior Presentations.

The evidence submitted by the Kingdom of Norway in support of the fifteen individual claims abounds in discrepancies that are difficult to reconcile. In the discussion of claim No. 3 on account of Hull No. 95, the character of these discrepancies is well illustrated. The cost of the contract for this hull is stated variously in the Norwegian Case now before the Tribunal and in the brief filed by Capt. C. Frolich Hanssen. This latter document is not contained in the Norwegian Case, but the United States has supplied the deficiency by printing in its Counter-Case, Appendix, beginning on page 246.

Although this brief was ignored in the Norwegian Case it is evidently regarded as part of the record, for the Norwegian Counter-case in referring to available facts on the claims says:

"A brief had been filed in support of them, accompanied by data explaining and substantiating them."[1]

[1] Norwegian Counter-case, page 13.

This statement makes the situation more difficult because if the data attached to the brief explained and substantiated the claims, the data now offered in the Norwegian Case must in many instances be wrong. For example Captain Hanssen's brief contained the following statement of the cost of the contract for Hull No. 95 now being considered under claim No. 3:

"No. 3 A. S. Baltimore:

Original Cost	$1,634,422.78	
Expenses, interest, commissions, etc	326,146.10	
		$1,960,568.88."[1]

This above is to be compared with the claim as made in the Norwegian Case as follows:

"Cost of contract to Baltimore Steamship Company:

Installments of contract price paid to yard and repaid to vendor	$210,937.50
Premium paid to vendor	1,296,922.78
Total	1,507,860.28."[2]

The question is: Which of these formal statements is right?

CLAIMANT'S SWORN STATEMENT SHOWS ONE AMOUNT, NORWEGIAN CASE ANOTHER.

In September, 1919, Capt. Hanssen submitted a sworn statement from Jens Bing, manager of the Baltimore Steamship Company, the present claimant. That statement declares as follows:

"For the assignment the said A/S paid to the last preceding owner in actual cash the sum of $1,634,422.78 figured on a rate of exchange of Kr. 3.27 as of the 19th day of September 1917; the date of said assignment according to Bank's statement."[3]

Bing swore to other payments which brought the total up to Captain Hanssen's original figure of $1,960,568.88.

DEN NORSKE HANDELSBANK CERTIFIES STILL ANOTHER FIGURE.

The Norwegian Case has added to the complication by printing with its Documentary Evidence a certificate of Den Norske Handelsbank, which shows payments that at a rate of Kr. 3.27 sworn to by Bing, total $1,787,526.27. The bank statement evidently includes two payments of $126,562.50, whereas Bing's sworn statement includes only one payment in this amount and the Norwegian Case includes no such payment at all in its claim.[4]

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[1] U. S. Counter-case, Appendix, page 250.
[2] Norwegian Case, page 165.
[3] U. S. Case, Appendix, page 675.
[4] See Full Discussion to follow on Claim No. 3. Infra, page 281.

STILL OTHER AMOUNTS SHOWN IN NORWEGIAN PRESENTATION.

The Documentary Evidence presented by the Kingdom of Norway shows a prospectus issued by the Baltimore Steamship Company declaring the cost of the contract for Hull No. 95 to be 7,000,000 kroner. This at the exchange rate of Kr. 3.27 would be $2,140,672.78.[1]

Still another figure of cost appears to have been presented by Covington & Burling in the first formal presentation of June 23, 1917. That figure was $1,703,568. It will be more fully discussed in the detailed treatment of claim No. 3.

Another figure that defies reconciliation was presented by Captain Hanssen in a memorandum of March 12, 1919. That memorandum showed that the amount paid for the contract at the last transfer prior to August 3, 1917, was $1,557,000.[2]

This amount is surprising, as the Norwegian Case now claims only $1,507,860.28 as the cost of the contract on a subsequent transfer which presumably from Captain Hanssen's language was at a higher price than the last transfer before August 3, 1917.[2]

All these discrepancies in the claimants' evidence become largely immaterial except on the issue of good faith once it is recognized that only physical property was requisitioned. The United States concedes its liability for this physical property. But upon the Norwegian theory of reimbursement for outlay for contracts, these discrepancies are most material, unless and until they are satisfactorily explained.

ATTEMPTS TO RECONCILE ALL DISCREPANCIES HAVE FAILED.

As will appear later, the United States has made an earnest and conscientious effort to reconcile these many discrepancies and thereby avoid what might appear to be captious comment. The impossibility of satisfactorily reconciling these various statements shows that it is not cavilling to call attention to the great variety of figures offered in substantiation of the claims. To make the record clear, the Kingdom of Norway should explain these discrepancies.

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[1] Norwegian Case, Documentary Evidence, page 179.
[2] U. S. Counter-case, Appendix, page 393.

VI. Conclusions.

The United States submits that the evidence before this Tribunal leads inevitably to the following conclusions:

(a) That the "taint" of Hannevig and his methods is upon every one of the fifteen claims.

(b) That the well proved identification of Hannevig and Hannevig's methods with every claim is more than enough to throw suspicion on the claims, even without the many other suspicious and significant circumstances that are apparent in the record.

(c) That the claims are not legitimate claims for compensation for property requisitioned by the United States, but are demands that the United States underwrite the speculative transactions of men who "bought a chance."

(d) That there is grave reason to believe that many of these transactions were not bona fide, even as speculations, but were devices for the threefold purpose of

(1) Magnifying claims against the United States.

(2) Unloading on a deluded public, stock of companies formed and founded on contracts which the Supreme Court of Norway has shown to be worthless except as "a purchase of a chance."

(3) Procuring loans from banks, either deceived by these speculators or associated with them, on the prospect of big indemnities from the United States.

(e) That on August 3, 1917, not a single claimant had any interest whatsoever in the property requisitioned by the United States, and that the only interest they may now have was acquired with their eyes wide open to the facts of requisition and to the gamble involved in their transactions.

(f) That the prices allegedly paid for the contracts did not represent real value, but fictitious values conceived, created and magnified with a view to obtaining large sums of money from the United States.

(g) That in some cases it is doubtful if the prices claimed were actually paid, the indications being that the prices allegedly paid were only pretended prices.

(h) That requisitioning, at least in claims 7 to 15, inclusive, and probably in all the cases instead of damaging the owners of August 3, 1917, actually saved them from great if not total loss.

(i) That the amount conceded by the United States in these cases is far more than the former owners of the nine Hannevig hulls could ever have received if there had been no requisition.

(j) That the amount conceded by the United States is complete and just compensation for the property requisitioned.

It is submitted that the foregoing conclusions will be found to be justified in the detailed discussion of the individual claims, which follows.

CLAIMS NOS. 1 AND 2.

1. Claimant: Manitowoc Shipping Corporation.

2. Account: Hull No. 87, known as the "*Lake Shawano*" and Hull No. 88, known as "*Lake Lida*," both steel cargo vessels of 3500 d. w. t.

3. Builder: Manitowoc Shipbuilding Company.

4. Amount Claimed: $1,028,220.24 each, or a total of $2,056,440.48.

5. Original Contracts dated: August 1, 1916.

6. Contract price: $280,000 on each ship, or a rate of $80. per d. w. t.

7. Contract Delivery Dates: No. 87—June 1, 1918. No. 88—July 1, 1918.

8. Percentage of Completion on August 3, 1917: No. 87—33.1%. No. 88—32.7%.

9. Keels laid: No. 87—October 6, 1917. No. 88—October 25, 1917.

10. Ships Delivered: No. 87—May 16, 1918. No. 88—May 2[illegible], 1918.

11. Original Owner: Christoffer Hannevig.

12. Owner on August 3, 1917: Christoffer Hannevig.

13. Progress payments by former owners: $84,000 on each ship.

14. Amount conceded by the United States as just compensation: Hull No. 87—$101,200. Hull No. 88—$101,000.

15. Assignments: As shown in Norwegian Case:

September 8, 1916—From Christoffer Hannevig to Hans Madsen.

March 20, 1917—Hans Madsen to Christoffer Hannevig, A/S.

March 26, 1917—Christoffer Hannevig A/S to Christoffer Hannevig.

September 12, 1917—Christoffer Hannevig to Peder Lindoe.

September 18, 1917—Peder Lindoe to Christoffer Hannevig.

September 20, 1917—Christoffer Hannevig to Manitowoc Shipping Corporation.

Claimant Company Not Organized Until More Than Two Months After Requisition.

These claims are submitted by the Kingdom of Norway on behalf of the Manitowoc Shipping Corporation, represented by K. Th. Einersen, Manager. Claim No. 1 is for $1,028,220.24 on account

of Hull No. 87 built by the Manitowoc Shipbuilding Company. Claim No. 2 is for the same amount on account of Hull No. 88, also built by the Manitowoc Shipbuilding Company. As the facts relating to the two claims are identical in every respect, they are treated together. Each claim is made up as follows:

Cost of Contract to Manitowoc Shipping Corporation:

Installments of contract price paid to yard and repaid to vendor	$84,000.00
Premium paid to vendor	647,500.00
Total	$731,500.00
Interest	296,720.24
Grand Total Claimed	$1,028,220.24

The character of this claim is best indicated by the fact that the claimant, the Manitowoc Shipping Corporation was not organized until October 16, 1917, more than two months after Hulls 87 and 88 had been requisitioned and seven days after the Norwegian Shipowners Association had, by special circular to its members and through the Norwegian press, served official notice to all parties concerned that all Norwegian new-buildings in America had been requisitioned for title and that all chances to keep the tonnage had been destroyed.[1]

The prospectus was not issued until September 20, calling for stock subscriptions from September 29th to October 6th. The promoters, therefore, among them Christoffer Hannevig, barely had time to unload their stock upon the investing public, who as admitted by Christoffer Hannevig, Sr., in his interview with Mr. Dutch, "had seen others make money and thought they could do the same without having any information as to the real situation in connection with shipbuilding."[2]

Hannevig Had Promised to Return Purchase Price.

That the company endeavored to make its venture a safe gamble is shown by its arrangement with Christoffer Hannevig under which it could procure an annulment of the purchase and demand repayment of the purchase price. This arrangement is disclosed in the

[1] Norwegian Case, pages 66–67.

[2] Memorandum of Conference with Mr. Christoffer Hannevig, Sr., February 14, 1919. U. S. Counter-case, Appendix, page 17.

annual report of the Manitowoc Shipping Corporation under date of May 12, 1919. The report says:

"In this connection rights were reserved with respect to the seller of the contracts of the company, Mr. Christoffer Hannevig, for annulment of the purchase and a demand for repayment of the purchase sum and indemnity for the company's loss. Mr. Hannevig has not been willing to acknowledge the justification of this, for which reason steps have been taken to have the question decided by court."[1]

The company thought it was fully safeguarded in its speculative venture, but, as the annual report indicates, it had over-estimated the value of a guarantee from Mr. Hannevig.

Having failed to get its money back from Mr. Hannevig, the company is now seeking to have the United States make good the losses.

Hannevig's Right Hand Man Director of Claimant Company.

The relationship of Christoffer Hannevig to the Manitowoc Shipping Corporation is best indicated by the fact that his right-hand man in Norway, Sven Bjork, was a director of the corporation. Sven Bjork was at one time manager of Christoffer Hannevig A/S and carried the power of attorney from that company.[2]

Bjork's name appears frequently in the record as signing for Christoffer Hannevig, A/S. Bjork, was also director of the Baltimore Steamship Company, the company claiming under Claim No. 3 on a contract, which shows that the last formal assignment was to Christoffer Hannevig.

Active Speculation In Contracts.

From the very beginning the contracts for Hulls 87 and 88 were instruments for speculation. There is no evidence of any intent on the part of any of the numerous holders of the contracts to obtain and operate the ships. They were sold back and forth until the resale profits amounted to $1,295,000. Christoffer Hannevig, the original owner, bought and sold the ships three separate times in his individual capacity and once as Christoffer Hannevig, A/S.

The general speculative purpose of all the dealings in these contracts is emphasized by the language of the prospectus of the Manitowoc Shipping Corporation issued September 20, 1917. That pros-

[1] U. S. Counter-case, Appendix, page 352.
[2] U. S. Counter-case, Appendix, page 344.

pectus while inviting stock subscriptions for a company to own the two vessels, said:

"The Board of Directors has the right to sell one or both of the contracts and to purchase new tonnage. *Before the statutory general meeting the promoters reserve themselves the same right.*"[1]

This self-confessed purpose is an enlightening contrast to the picture which the Norwegian Case has so painstakingly built up—a picture of substantial shipping men, without a thought of speculation, struggling desperately to get real ships to supply the pressing needs of Norway.

Another striking contrast is between the avowed object of K. Th. Einersen in conceiving the Manitowoc Shipping Company and the actual acts of K. Th. Einersen in organizing the company.

Einersen Says He Wanted The Ships to Invest His Idle Capital, but He Went to Public for Stock Subscriptions.

Mr. Einersen says he wanted the ships as a means of investing *his* idle capital. His own words are:

"On account of the money distributed to the shareholders at the liquidation of the company and on account of similar distributions in connection with the Einersen Shipping Company, Inc., the result of the sinking of the sailing vessel "Falls of Afton," Einersen, who was a big shareholder in both companies, found himself in possession of a considerable amount of idle capital. Einersen was at that time also interested in other shipping companies which had lost their vessels in similar manner, resulting in liquidation or partial distributions of the share capital, and thus Einersen came into possession of still further dead capital.

"*In order to find a profitable manner of investing this money and in order to reconstruct his heavily reduced shipowning business Einersen began during the Summer of 1917 to investigate the possibilities for acquiring* new tonnage to replace the sunken ships."[2]

However, it would seem that it was not Mr. Einersen's money at least for the most part that was invested when the time came to organize a company and take over the contracts. Mr. Einersen, himself, tells the story:

"Einersen issued a prospectus simultaneously with his accepting the two contracts, inviting the public to take part in the formation of the new company. * * * The capital was immediately fully subscribed. Among the shareholders are persons of all classes, and practically every part of the country is represented. Thus the list of shareholders contains nearly one hundred (100) *women in various*

[1] Norwegian Case, Documentary Evidence, page 162. Italics ours.
[2] Norwegian Case, pages 180–181. Italics ours.

conditions of life as for instance, teachers, clerks, sick nurses, etc., many of whom have, no doubt, invested the greater part of their savings in the company.

"The following specification of shareholders is of interest:

6 fishermen
30 craftsmen
32 farmers
16 ships captains
18 shipowners & shipbrokers
11 doctors & dentists
11 bankmen in leading positions, such as bank managers, directors, etc.
65 wholesale merchants, merchants and small dealers.

"Besides these there are lawyers, teachers, engineers, clerks, postmen, military officers, estate owners, etc., etc.

"The total number of shareholders is about six hundred (600) distributed over 102 municipalities all over the country, from the far North (Vardo) to the far South (Christiansaand)."[1]

Thus, Mr. Einersen's avowed plan of buying ships for a substantial business investment of his idle capital ends with the gathering in of the life savings of women teachers, sick nurses, fishermen, farmers and workingmen. Mr. Einersen is so specific that there is little difficulty in visualizing the speculative mania that was sweeping Norway and making it possible for promoters to persuade a credulous public to buy stock in companies that were formed only to deal in paper contracts for ships that the promoters knew could never be delivered to the contract holders.

In fairness to Mr. Einersen, it is not implied that he did not subscribe any of his own funds. The Norwegian Case is silent on that point, but the prospectus states that Kr. 1,500,000 (out of about 4,000,000 Kr. eventually paid up) had been subscribed by and through the promoters, one of whom was Christoffer Hannevig.

Funds Largely Obtained by Loan

However, it appears that a considerable sum must have been obtained as a loan from the bank, for Den Norske Handlesbank certifies that the Manitowoc Steamship Co. paid Kr. 240,839.65 in interest for loan during the period from September 21, 1917 to September 1, 1919.[2]

The Norwegian Counter-case shows a total of Kr. 365,139.43 as bank commissions, organization and operating expenses incurred in purchasing the contracts and not hitherto presented.[3]

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[1] Norwegian Case, pages 185–186. Italics ours.
[2] U. S. Counter-case, Appendix, page 269.
[3] Norwegian Counter-case, Appendix, page 243.

The sworn statements of K. Th. Einersen, not printed in the Norwegian Case, but produced in the U. S. Counter-case Appendix, contains the following:[1]

"In procuring funds to finance said contract the said A/S Skibsaktieselskapet "Manitowoc" was obliged to expend $18,586.29 for commission in accordance with the following statement:

Bank Commission Outlay, as per decalaration enclosed	Krs. 84,492.80—	$26,078.02
Bank Commission on money borrowed as per declaration enclosed	Krs. 35,946.40—	11,094.57
Total		$37,172.59

The two declarations referred to were from Den Norske Handelsbank. One showed payment of Kr. 84,492.80 paid to the bank as commission in "connection with the start of the company". The other certified that the company had paid the bank Kr. 35,946.65, "being commission on loan to the said company from 21st September 1917, to the 1st September 1919."

Altogether with the large commissions and interest paid and with full subscriptions to all the stock offered to the public it would appear that the promoters could have put up very little cash of their own.

The United States has no obligation to indemnify the shareholders in such enterprises as Mr. Einersen describes. It would seem that if these unfortunate investors are to get back their money, it should come not from the United States, but from their own countrymen who took it from them.

The conduct of the promoters of this enterprise in this respect is quite different from that of H. Kjerschow, claimant under claim No. 13, and N. Chr. Evensen, claimant under claim No. 15.

Mr. Kjerschow in telling of his plans for the contract for Hull No. 205, says:

"It was our intention, as soon as the necessary formalities in regard to transfer and meetings in our company were in order, to transfer the contract to our company. However, the press began to write about an eventual requisition in such a manner that we found it inadvisable to make any change regarding ownership on account of the inevitable negotiations about settlement, should the requisition be put into effect, although we thought we were fully protected."[2]

[1] U. S. Counter-case, Appendix, page 266.
[2] Norwegian Case, page 238.

Mr. Evensen in his statement regarding the contract for Hull No. 214, said:

"According to usual practice, the contract was purchased by the managers for above named companies for later transfer to either of our companies that might sustain loss. *The requisition for title later on caused us to remain owners of the contract as a private company financed by our bank.*"[1]

Reference is also made to the statement of Jacob Prebensen, Jr., claimant under claim No. 7. The Norwegian Case quotes Mr. Prebensen as follows:

"It was my intention to form a company to take over the new vessel. The report from Washington to the effect that the U. S. Shipping Board had decided on the 4th of October to requisition the Norwegian vessels for title, a report which reached us on the 10th of October, 1917, made it impossible, however, to form a company, and I therefore had to keep the contract myself and the claim against the American Government for damages."[2]

It makes no moral difference whether the stock of the Manitowoc Shipping Corporation was taken up by subscription before or after October 9, 1917, for the fact remains that after formal official notice on that date from the Norwegian Shipowners Association, which notice made it impossible for the promoters to go on pretending that the two ships could be secured, the promoters proceeded to perfect their organization, and did not, so far as the evidence discloses, return subscriptions that had been received.

The subscribers had bought stock in a company which was to own two certain ships. The prospectus gave no inkling of any plan to proceed as a claim-holding company in the event of failure to get the ships.

Among questions unanswered by the evidence produced in the Norwegian Case is what became of the paid up subscriptions. The prospectus shows that subscriptions were to be received up to October 6, 1917, *and that 40% of the amount subscribed was to be deposited, with a promise from the promoters that this 40% deposit would be placed in Den Norske Handelsbank in the names of the subscribers.*

Only three days elapsed between the closing of the subscription lists on October 6th and the final positive notice of October 9th, that ships had been requisitioned for title. Surely, it was not too late on October 9, 1917, to put an end to the organization of the company

[1] Norwegian Case, page 245. Italics ours.
[2] Norwegian Case, page 219.

and return subscriptions. To be sure the subscribers had "purchased a chance," but query whether these small stockholders were morally on a basis with Hannevig and the other promoters or whether they would be held to be legally on a basis of equality with them by the Norwegian Courts.

The Early Speculations in the Manitowoc Contracts.

The contracts for Hulls 87 and 88 were made on August 1, 1916, with Christoffer Hannevig as purchaser. The price was $80 per ton. Hannevig kept the contracts for five weeks before the first assignment was made on September 8, 1916, to Hans Madsen at an advance of $73,000 in the price of each ship.[1]

A peculiar feature of this transaction is that Hannevig continued to act as if he still owned the vessels. The sworn statement of the shipbuilder shows that Hannevig made four progress payments—two on each vessel—while, ostensibly, the contract was owned by Hans Madsen. Two payments of $28,000 each were made November 9, 1916, and two of $28,000 each on November 30, 1916.[2]

After November 30, 1916, no other payment became due or was made by any owner of the contracts.

On March 20, 1917, Hans Madsen sold the two contracts to Christoffer Hannevig, A/S. The premium stated in the assignment was $204,000 for each vessel.[3]

Christoffer Hannevig A/S held the contracts for six days before transferring them to Christoffer Hannevig as an individual. The assignment does not show any consideration.[4]

The next transfer was on September 12, 1917, when Christoffer Hannevig assigned the contracts to P. Lindoe, who was presumptively the owner for six days before he reassigned the contracts to Christoffer Hannevig on September 18, 1917.

The last assignment was three days later, on September 21, 1917 when Christoffer Hannevig assigned to the Manitowoc Shipping Corporation for a stated payment of $1,463,000.[5]

The documentary evidence offered by the Kingdom of Norway contains a copy of the receipt of Christoffer Hannevig for $1,463,000. K. Th. Einersen in sworn statements in support of the claims declares that $731,500 was paid to Christoffer Hannevig for each vessel.[6]

[1] Norwegian Case, Documentary Evidence, page 172.
[2] U. S. Case, Appendix, page 370.
[3] Norwegian Case, Documentary Evidence, page 173.
[4] Norwegian Case, Documentary Evidence, page 174.
[5] Norwegian Case, Documentary Evidence, page 175.
[6] U. S. Counter-case, Appendix, pages 265 and 271.

The customary proof of payment is lacking. No cancelled checks, or statements from the bank, are presented to substantiate the payment.

It is respectfully submitted that the record in the case of these two claims indicates that the assignment to the Manitowoc Shipping Corporation was made as a part of a general scheme of promotion and speculation, with the understanding that the so-called purchase by the Manitowoc Shipping Corporation would be nullified and the purchase price refunded in case the promoters failed to collect from the United States. It was a guaranteed speculation. As an initial safeguard to his fellow promoters and an encouragement to the investing public, Christoffer Hannevig promised to nullify the sale in certain events, and as an additional guaranty against personal loss the promoters unloaded most of the stock in the venture upon a too confiding public. And finally, the record more than suggests that one motive for the entire transaction was that the promoters of this flotation had in mind its utility in increasing the amount which could be claimed from the United States as just compensation.

It is to be remembered that when this general plan was conceived there was no such thing as the Manitowoc Shipping Corporation.

On September 18, 1917, Christoffer Hannevig got back the contracts by assignment from P. Lindoe, and two days later Christoffer Hannevig A/S and K. Th. Einersen issued their prospectus asking the public to join in the formation of the Manitowoc Shipping Corporation. The assignment of the contract followed on the succeeding day when Hannevig assigned to a so-called corporation that had no corporate existence.

Notice of the Manitowoc Shipping Corporation was given in the Commercial Register of the City of Christiania, under registration dates of July 15, 1918 and June 1, 1920. According to these notices the statutes of the corporation were dated October 16, 1917.[1]

The Haandbok over Norske Obligationer og Aktier shows that the Manitowoc Steamship Company was organized October 16, 1917.[2]

It is submitted that an award of $101,200 in Claim No. 1 and $101,000 in claim No. 2 will be fully responsive to the obligations of the United States with respect to these claims.

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[1] U. S. Counter-case, Appendix, page 345.
[2] U. S. Counter-case, Appendix, page 351.

CLAIM NO. 3.

1. Claimant: Baltimore Steamship Company, represented by Jens Bing, Manager.

2. Account: Hull No. 95, a 7500 ton d. w. cargo steamer known as the "*Vittorio Emanuelle III.*

3. Builder: Seattle Construction & Dry Dock Company.

4. Amount Claimed: $2,120,679.93.

5. Original Contract dated: August 11, 1916.

6. Contract Price: $843,750, or at the rate of $112.50 per dwt.

7. Contract Delivery Date: September 29, 1917.

8. Percentage of completion on August 3, 1917: 30%.

9. Keel laid: November 5, 1917.

10. Ship Delivered: June 27, 1918.

11. Original Owner: Willy Gilbert.

12. Owner on August 3, 1917: S. O. Stray.

13. Progress payments by former owners: $210,937.50.

14. Amount conceded by the United States as just compensation: $255,900.

15. Assignments:

As claimed in Norwegian Case.

October 5, 1916, from Willy Gilbert to Olaf Orvig;
October 5, 1916, Olaf Orvig to O. Hafstad;
October 14, 1916, O. Hafstad to Frimann Pedersen;
April 17, 1917, Frimann Pedersen to S. O. Stray & Co.:
September 18, 1917, S. O. Stray & Co. to the Baltimore Steamship Company.

Assignments as shown on the contract.

October 5, 1916, Willy Gilbert to Olaf Orvig;
October 5, 1916, Olaf Orvig to O. Hafstad;
October 14, 1916, O. Hafstad to Frimann & Pedersen;
April 4, 1917, Frimann & Pedersen to Stray & Co.
September 18, 1917, S. O. Stray & Co. to Christoffer Hannevig;

Undated endorsement to order of Baltimore South American Navigation Company by Christoffer Hannevig.

Claim Chiefly for Resale Profits.

The amount claimed is made up as follows:

Installments of contract price paid to yard and repaid to vendor	$210,937.50
Premium paid to vendor	1,296,922.78
Total	1,507,860.28
Interest on above	612,819.65
Total claimed	2,120,679.93

An analysis of this claim is very difficult because of the conflicting character of the evidence presented by the Kingdom of Norway, and, also, by the failure of the Norwegian Case to present evidence essential to a complete understanding of the claim.

Important Questions Left Unanswered.

Five very important and pertinent questions not answered by the evidence offered by the Kingdom of Norway are:

1. Who owns the contract for Hull No. 95?
2. What was the cost of the contract to the present owner?
3. Was the contract ever transferred in a bona fide sale to the Baltimore Steamship Company?
4. If the contract was assigned on September 18, 1917, to the Baltimore Steamship Company, why was the assignment of that date made out to Christoffer Hannevig?
5. If the contract was actually sold to the Baltimore Steamship Company, why is that company suing S. O. Stray & Co. to determine the ownership of the contract?

No Evidence of any Transfer to Baltimore Steamship Company.

Although the claim is presented on behalf of the Baltimore Steamship Company, there is no acceptable evidence that this company ever owned the contract. On the contrary, the Norwegian Case, itself, in attempting to substantiate the Baltimore Steamship Company's ownership rights makes it all the more doubtful that the claimant has any right to present a claim.

In fact the only really acceptable evidence indicates that the Baltimore Steamship Company is ready to deny ownership in the event that a satisfactory award is not obtained from the United States.[1]

Suit Over Ownership of Contract.

Apparently, the only reason why the Baltimore Steamship Company has not pressed its suit to compel S. O. Stray & Co. to acknowledge ownership of the contract is that the claimant hoped to get a bigger award from the United States than it could get from Stray & Co. No other conclusion is possible from the language of the Baltimore Steamship Company in its annual report for 1919. The following is quoted from that report:

"The case against S. O. Stray & Co. as mentioned in the previous circular will now be begun. *Several conditions prevailed when the bringing of the suit was postponed. Among other things, it would have been desirable that the question of indemnity from America should have been settled before the proceedings were begun*, and there seemed to be prospects of this for a time though unfortunately this hope has not been fulfilled.

"We take the liberty, furthermore, of stating that *in recent times the Christiania Court has rendered a decision in a similar case, in which a firm which had bought an American new-ship contract after requisitioning was acknowledged as being entitled to receive back the purchase sum from the seller.* As far as we understand, our case seems to be rather similar to the one thus decided, and we therefore entertain firm hopes that we shall not suffer any loss in this affair."[2]

This quotation from the claimant company's own report forces attention to two pertinent points:

First, it is made plain that the suit against Stray & Co. had been postponed in the hope that the United States would settle before the trial, the only possible implication being either that the complainants feared the litigation would be hurtful to their claim, or that the company hoped to get an award from the United States which would make it more profitable to hold on to the ownership of the contracts.

Second, it is shown by the company's own language that it expects to nullify the alleged sale in the event of failure to hold the United States in an amount satisfactorily large, for it cites a similar case

[1] See extract from annual report of Baltimore Steamship Co. U. S. Counter-case, Appendix, page 353.

[2] U. S. Counter-case, Appendix, page 353. Italics ours.

already decided by the Christiania Courts as a precedent for nullifying sales of contracts made after the date of requisition.[1]

The meaning of the claimant is clear. The Norwegian Company does not expect to lose whichever way the cards may fall; it prefers to get a large sum out of the United States and is willing to assume ownership of the contract so long as it has good prospects there, but if it cannot get a good settlement from the United States, then, Stray & Company must accept ownership of the contracts and return what has been paid.

Stray Company Signatures Required Two Years after Alleged Sale.

That there was never an uncontestable sale of this contract to the Baltimore Steamship Company is indicated not only by the annual report for 1919, but by the power of attorney given to the Norges Rederforbund under date of January 6, 1919. This document seems to establish quite definitely that the Baltimore Steamship Company was either unable legally or unwilling for business reasons to grant a power of attorney covering the contract for Hull No. 95.

It is highly significant that this power of attorney required the signatures of both the Baltimore Steamship Company and S. O. Stray & Co., but the language used is even more significant. The document in question, after authorizing the Executive Committee of the Norges Rederforbund to make a settlement with the United States on account of Hull No. 95, continued as follows:

"The present agreement is in every way without prejudice to our mutual legal relations with regard to the contract.

"The expenses connected with the Executive Committee's assumption of the interests of the contract, for which expenses we are jointly and separately responsible to the Executive Committee, is to be carried by the one who at the final settlement (legal settlement, arbitration, or amicable adjustment) will be deemed to be the real owner of the contract."[2]

This is indeed strange language for the Norwegian Case to offer as proof that the Baltimore Steamship Company owns the contract. If the Baltimore Steamship Company bought the contract as stated in the Bing affidavit, and paid for it as certified by Den Norske Handels-

[1] The decision referred to may well have been in the case of the Bestum II, in the lower court. The decision in the Norwegian Supreme Court in that case has probably altered the viewpoint of the claimant company.

[2] Norwegian Case, Documentary Evidence, page 187.

bank, why should it be necessary for Stray & Co. to join in the power of attorney, and why should a determination of ownership be left in dispute? The paragraphs quoted from the power of attorney show conclusively that any assignment from Stray & Co. to the Baltimore Steamship Company must have been very questionable in character.

The contract, itself, as reproduced in the Documentary Evidence supporting the Norwegian Case shows five assignments, but not one of them was to the Baltimore Steamship Co. The Kingdom of Norway has not produced any assignment to this company.[1]

The Hannevig Assignment.

One mysterious transaction that the Norwegian Case and Countercase leave unexplained is an assignment of the contract for Hull No. 95 to Christoffer Hannevig. This assignment is endorsed on the contract and a translation as carried in the Norwegian Case reads as follows:

"Transferred hereby to Mr. Christoffer Hannevig, Christiania, without recourse, Christianssand, S. 18th September, 1917.
For S. O. Stray & Co.
(Sign) Chr. Cornelius—Chr. Hoy."[1]

Mr. Hannevig thereupon endorsed the contract to one of his dummy corporations in the following language:

"Order Baltimore South American Navigation Co.
(Sign.) Christoffer Hannevig."[1]

That was the final endorsement upon the contract as printed in the Norwegian Case, Documentary Evidence.

In presenting a claim for the Baltimore Steamship Company, the Agent of the Kingdom of Norway was faced with the necessity of explaining this assignment to Christoffer Hannevig. The explanation was left to Mr. Hannevig himself, who simply deepened the mystery.

Assignment of Contract to Hannevig was an Error Says Hannevig.

Quite naively, Mr. Hannevig disposes of the difficulty by stating that it was all an error, that the contract was never assigned to him,

[1] Norwegian Case, Documentary Evidence, page 184.

and that neither he nor Christoffer Hannevig A/S has ever owned the contract. Mr. Hannevig says:

"The assignment on the contract should therefore be corrected accordingly to read 'assignment from S. O. Stray & Co., to D/S Baltimore, Christiania'".[1]

Norwegian Counter-case Denies That Hannevig Ever Owned The Contract.

The Norwegian Counter-case supplements Hannevig's denial of ownership of this contract with a denial and explanation of its own. The Counter-case says:

"The contracts in claims 3 and 5 were never owned by Christoffer Hannevig or any of his interests. The United States suggests that "there is evidence tending to show that either Christoffer Hannevig or one of his corporate aliases, the Baltimore and South American Navigation Company, was an 'assignee'" of the contract in claim 3. But in its own appendix on page 679 the United States prints the explanation of this apparent assignment. Hannevig never owned the contract at all nor did his company. He acted as broker in selling it and in passing through his office the erroneous endorsement was made upon the contract.[2]

This simple explanation might explain Hannevig's endorsement to his company, the Baltimore and South American Navigation Company, but it still leaves unexplained that very formal assignment on the face of the contract itself—an assignment by S. O. Stray and Company signed by Chr. Cornelius and Chr. Hoy, and reading as follows:

"Transferred hereby to Mr. Christoffer Hannevig, Christiania, without recourse."

Was that also a mistake made "in passing through" Hannevig's office?

Another pertinent question is: Why did Hannevig wait until April 14, 1919, when he was getting ready the claims, to authorize Den Norske Handelsbank to delete his endorsement of the contract to the Baltimore South American Navigation Company?

Again, why is there not some explanation from S. O. Stray & Company, who apparently made the initial error? Is Hannevig the only witness available with respect to this claim, which he "never owned?"

The affidavit of Jens Bing swearing to the claim as presented by Capt. C. Frolich Hanssen in September, 1919, states as follows:

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[1] Norwegian Case, Documentary Evidence, page 185.
[2] Norwegian Counter-case, page 82.

"That on the 18th day of September, 1917, said S. O. Stray & Co. assigned said contract to A/S 'Baltimore, Kristiania.'"[1]

An explanatory note states as follows:

"The original assignment cannot be produced because the original contract with assignments is deposited in Den Norske Handelsbank. A true copy is attached hereto marked Exhibit 1 and 1-a."[1]

The copy attached did not show any assignment whatsoever to the Baltimore Steamship Co., but did show that the final assignment was to Christoffer Hannevig and that Hannevig endorsed to the order of the Baltimore South American Navigation Co., one of Hannevig's dummy corporations incorporated in America, which must not be confused with the Baltimore Steamship Company, incorporated in Norway as the Dampskibsaktieselskabet Baltimore.

It is respectfully submitted to the Tribunal that the Kingdom of Norway has failed to submit acceptable evidence that the Baltimore Steamship Company has any rights on account of the requisitioning of Hull No. 95.

The whole record in the Case of Claim No. 3 is unsatisfactory. The statement of Christoffer Hannevig as made on August 22, 1919, cannot be accepted as good evidence against the assignments on the contract. The contract shows the last assignment was to Christoffer Hannevig. Christoffer Hannevig says this was not true.

The assignment on the contract if authentic is a contemporaneous record and as such is good evidence of what actually occurred. Mr. Hannevig's statement was made about two years after the event and was admittedly prepared for a definite purpose. It is not evidence in any true sense of the word.

The United States submits that better evidence of ownership than has been offered should have been laid before the Tribunal.

This matter was brought to the attention of the Kingdom of Norway in the Case of the United States, but the Norwegian Countercase instead of producing some evidence on this very simple point merely produces a further assertion signed by the Norwegian Agent and Counsel, who presumably do not lay claim to any personal knowledge in the premises. The United States is not attempting to prove that Hannevig or his dummy company, the Baltimore & South American Navigation Company owns this claim. The United States

[1] U. S. Case, Appendix, page 674.

does not know who owns this claim, and it is not the duty of the United States to find out. The United States is simply endeavoring to point out that the burden of proof in this matter rests upon the Kingdom of Norway and that that burden has not been met.

Hannevig's Hand in Baltimore Steamship Co.

As seen in the organization of the Baltimore Steamship Company, Hannevig himself does not appear as a director, but was one of the four promoters, and Sven Bjork, who was Hannevig's right-hand man in Norway, and who for a time was manager of Christoffer Hannevig, A/S, was a director. Another associate of Hannevig who was a director in the Baltimore Steamship Company was Karl A. Thorbjornsen who is involved in claims 12 and 13. Another director was Jens Bing now manager of the Company, and the same Jens Bing who took an assignment of the contract for Hannevig Hull No. 204 and reconveyed the contract to E. & N. Chr. Evensen, Inc., the present claimant under claim No. 15. One of the other directors of the Baltimore Steamship Company was Berger Lie, a partner of H. Kjerschow, claimant under claim No. 13 on account of Hannevig Hull No. 205, which was transferred from Hannevig's dummy company the Manss Steamship Company to Karl A. Thorbjornsen and assigned by Thorbjornsen to Kjerschow for him and his partners, one of whom was Mr. Lie.

Hannevig's Name Left off Prospectus as Published in the Norwegian Documentary Evidence.

In this connection the attention of the Tribunal is respectfully drawn to the omission of the signature of Christoffer Hannevig, A/S, one of the four promoters, from the version of the prospectus published in the Documentary Evidence submitted by the Kingdom of Norway,[1] although the prospectus as published in the Haandbok over Norske Obligationer og Aktier, for 1918, shows on page 341 that Christoffer Hannevig, A/S, signed the prospectus as one of the promoters.[2] The Norwegian Counter-case seems somewhat impatient at the failure of the Case of the United States to accept Christoffer Hannevig's belated assertion, on August 22, 1919, that the transfer to

[1] Norwegian Case, Documentary Evidence, page 179 at 180. See Counter-case of the United States, page 21.

[2] Translated extracts from *Haandbok over Norske Obligationer og Aktier*. The Baltimore Steamship Company, Christiania, U. S. Counter-case, Appendix, page 352 at 353.

him under date of September 18, 1917, was "an error."[3] It would appear however, that this impatience would be better reserved for the claimants who supplied the Norwegian Agent with a copy of the prospectus of the claimant lacking the signature of Christoffer Hannevig, A/S. It is incidents of this character which compel the United States to give careful scrutiny to unsupported statements emanating from Christoffer Hannevig and his close associates in the "Hannevig Group."

Undoubtedly a Hannevig Transaction.

There can be no doubt that the formation of this company was a Hannevig transaction. Not only was he one of the promoters, but the whole ostensible purpose of the company depended upon an arrangement with Hannevig's dummy company, the Baltimore South American Navigation Company. This company was organized by Christoffer Hannevig; he was its Vice President, his brother Finn Hannevig was president and his two lieutenants, R. J. Bullowa and J. B. Simpson were respectively Secretary and Treasurer.

The prospectus as printed in the Norwegian Documentary Evidence contains the following:

"The intention is to run the vessel between Baltimore and South America *and an arrangement has been entered into with the Baltimore South American Navigation Company, Baltimore.*"[1]

Jens Bing in his statement in the Norwegian Case says:

"In addition to this we had an offer from the Baltimore South American Steam Navigation Company which wanted the vessel for its line between the Northern States, chiefly Baltimore, and Buenos Aires, so long as the war lasted."[2]

The very name "Baltimore Steamship Company" must have been borrowed from Hannevig's dummy corporation in America.

Now, it is hardly possible to imagine that an offer could have been made by Hannevig's American company and translated into an arrangement between that company and the forming Baltimore Steamship Company without Hannevig being a closely interested party.

A summary of the facts in the record shows the following:

(a) The contract was assigned to Christoffer Hannevig on September 18, 1917.

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[3] Norwegian Counter-case, page 82.
[1] Norwegian Case, Documentary Evidence, page 179. Italics ours.
[2] Norwegian Case, page 193.

(b) The contract was endorsed by Hannevig to his dummy company, the Baltimore South American Navigation Company.

(c) A prospectus of the Baltimore Steamship Company was issued over the signature of Christoffer Hanevig A/S on September 18, 1917, the very day Hannevig acquired the contract from Stray.

(d) The prospectus told of an arrangement with Hannevig's dummy company, the Baltimore South American Navigation Company, to which Hannevig had endorsed the contract.

(e) Hannevig's lieutenant in Norway was made one of the directors of the Baltimore Steamship Company.

In view of the foregoing it requires more than a belated letter from Christoffer Hannevig to prove that this was not a Hannevig transaction.

Also, the foregoing gives ground for calling attention to the attempt in the Norwegian Counter-case to prove that Hannevig was concerned only in contracts on which less than one-fourth of the total claim is based. The Norwegian Counter-case says:

"* * * although less than one fourth of the amount claimed is based upon contracts with companies controlled or in any way concerned with Mr. Hannevig."[1]

This statement might be technically defended in this instance on the ground that Hannevig did not control the Seattle Construction & Dry Dock Company. But it is submitted that the statement was calculated to give the impression that Hannevig was never concerned in matters involved in as much as one-fourth of the claims. It is respectfully submitted that Hannevig was very much concerned in the contract leading up to Claim No. 3. As record owner of the contract, owner of one company which ostensibly was to operate the ship and one of the four promoters of the claimant company, it would seem that Hannevig was quite deeply concerned.

Baltimore Steamship Company not Organized Until October 12, 1917.

According to the Haandbok over Norske Obligationer og Aktier. 1918, page 341, this organization was apparently perfected three days after final notice from the Norwegian Shipbuilders Association to the effect that ships had been requisitioned by the United States for title. The capital stock of the Company was fixed originally at

[1] Norwegian Counter-case, page 14.

5,500,000 kroner but by resolution of the stockholders on the dates of May 28, 1920, and March 22, 1921, the capital of the Company was reduced to 5,425,000 kroner. The decrease was caused by the fact that kroner 75,000 of the original capitalization had not been subscribed.[1]

Discrepancies in Prices Allegedly Paid for Contract.

An effort satisfactorily to reconcile the many and varying statements of the costs of the contract for Hull No. 95 has proved futile. The records before the Tribunal show different totals as follows:

1. As shown in first formal claim June 23, 1919	$1,703,568.00
2. As shown in Capt. Hanssen's brief of November 5, 1919	1,960,568.88
3. As certified by Den Norske' Handelsbank	1,794,791.72
4. As shown in prospectus of Baltimore S. S. Co	2,140,672.78
5. As claimed in Norwegian Case	1,507,860.28
6. As shown in Capt. Hanssen's memorandum of March 12, 1920, showing price of contract at last transfer prior to August 3, 1917	1,557,000.00

The first formal presentation of the claim was under date of June 23, 1919, in the form of a letter from Covington & Burling to the Chairman of the Shipping Board.[2]

That letter transmitted a schedule giving facts in regard to the ships, but this schedule is not attached to the letter in the files of the Shipping Board. However a statement in the letter to the effect that the total paid out on the 15 contracts was $12,698,081.00 serves as a means of connecting the schedule with one that is now in the files. This schedule is attached to a memorandum of September 12, 1919 from H. M. Robinson, a commissioner of the Shipping Board to Chairman Payne. The memorandum discusses the claims presented by Covington & Burling and states that the claims are "as set forth in the attached table." The table attached to Commissioner Robinson's report contains a column headed "amount paid cash by present owners." The total of that column is $12,698,081.00, agreeing exactly with the total used in the Covington & Burling letter.

It is a fair presumption that the tabular statement attached to the memorandum of Commissioner Robinson[3] was based upon the schedule transmitted by Covington & Burling in so far as this particular column was concerned.

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[1] U. S. Counter-case, Appendix, pages 347–352.
[2] U. S. Counter-case, Appendix, pages 241–242.
[3] U. S. Counter-case, Appendix, page 243.

The tabular statement to the Robinson memorandum showed that the amount paid in cash by the A/S Baltimore, owner of the contract for Hull No. 95, was $1,703,568.[1]

Second Presentation Gives a Different Figure.

The second formal presentation was in the form of a brief dated November 5, 1919, submitted to the Shipping Board by Capt. C. Frolich Hanssen. The cost of the contract for Hull No. 95 was shown in the brief as follows:

"No. 3 A/S Baltimore:

Original Cost	$1,634,422.78
Expenses, interest, commissions, etc	326,146.10
	1,960,568.88"[2]

In stating the claims, Capt. Hanssen offered the following explanation in the form of a note:

"Note. The claims in their present form differ slightly in amounts from the claims previously submitted. The differences result from the establishment among the claimants of a uniform system in stating their claims. Actual interest paid had been included. Where the claimant was using its own money interest has been computed at the rate of 5 per cent, the legal rate in Norway."[3]

Den Norske Handelsbank Certificate of Payments Apparently Contains Duplications.

The certificate of Den Norske Handelsbank as printed in the Documentary Evidence of the Kingdom of Norway shows a different figure for the outlay of the Baltimore Steamship Company. This certificate states amounts partly in dollars and partly in kroner, but the certificate gives the rate of exchange as Kr. 3.27 and when converted to dollars at this rate, the amounts certified as paid by the Baltimore Steamship Company are as follows:[4]

Paid to Stray & Company for the contract	$1,634,422.78
Commission to bank	16,344.22
Paid in as joint deposit	126,562.50
Paid in as interest differential	10,196.77
Paid as commission for overdraft	7,265.45
Total	1,794,791.72

[1] U. S. Counter-case, Appendix, page 245.
[2] U. S. Counter-case, Appendix, page 250.
[3] U. S. Counter-case, Appendix, page 253.
[4] See Statement regarding Purchase price, Den Norske Handelsbank, Norwegian Case, Documentary Evidence, pages 187–188.

It will be noted that the amount paid to Stray & Co. $1,634,422.78, agrees with the original cost as shown in Capt. Hanssen's brief of November 5, 1919.

Prospectus Shows Still Another Figure.

The Norwegian Case supplies still another statement of cost that differs greatly from the statements already shown. This is found in the prospectus of the Baltimore Steamship Company.

The prospectus states:

"The boat has been purchased for Kr. 7,000,000 and is transferred to the Company at the same price."[1]

The price stated in the prospectus when converted into dollars at the rate of Kr. 3.27 is $2,140,672.78. This price no doubt includes the unpaid instalments to the shipbuilder. If so, a simple sum shows that the net cost to the Baltimore Steamship Company was considerably less than indicated by any of the previous statements, as demonstrated below:

Stated Price of Vessel	$2,140,672.78
Deduct unpaid instalments	632,812.50
	1,507,860.28

The Figure Last Shown Agrees with the Price as Claimed in the Norwegian Case.[2]

On page 165 of the Norwegian Case the amount is made up as follows:

Instalments of contract price paid to yard and repaid to vendor	$210,937.50
Premium paid to vendor	1,296,922.78
Total	1,507,860.28

This agrees in part, but only in part, with the sworn statement of Jens Bing, Manager of the Baltimore Steamship Co. That statement was submitted informally to the U. S. Shipping Board by Capt. Hanssen in September, 1919. The statement contains the following:

"For the assignment the said A/S paid to said last preceding owner in actual cash the sum of $1,634,422.78 figured on a rate of exchange of Kr. 3.27 as of the 19th day of September 1917; the date of said assignment according to Bank's statement."[3]

[1] Norwegian Case, Documentary Evidence, page 179.

[2] See Whan statement opposite page 161 Norwegian Case. See statements Norwegian Case, pages x and 165.

[3] U. S. Case, Appendix, page 675.

Sworn Statement by Bing Shows $126,562.50 More Than is Now Claimed.

On the same page, the sworn statement of Jens Bing states:

"Of the said sum of $1,634,422.78 paid by A/S Baltimore as aforesaid, the sum of $1,296,922.78 represents the bonus paid for the said contract, and the sum of $210,937.50 represents the installments of the purchase price theretofore paid to the shipbuilder by former owner of said contract $126,562.50 represents deposit."

The purpose of the $126,562.50 deposit is entirely unexplained. The same figure is used by Den Norske Handelsbank in its certificate, but apparently the bank certified to this deposit as having been paid twice. The Handelsbank certificate first certifies that the Baltimore Steamship Company paid $1,634,422.78 for the contract, and "Further, that the Dampskibsaktieselskabet Baltimore has paid in as joint deposit U. S. A. Dollars 126,562.50."[2]

Obviously, if, as the Bing affidavit states, the $126,562.50 was included in the $1,634,422.78, Den Norske Handelsbank must have duplicated the amount in its certification.

$126,562.50 Included by Bing as Payment Was Presumably Performance Bond from Builder.

While the Norwegian Case has failed to explain this item of $126,562.50, it is assumed (by the Agent of the United States) that the deposit has reference to a requirement in the original contract between Willy Gilbert and the Seattle Construction & Dry Dock Co., covering Hull No. 95, as follows:

"At the same time, the Builders agree to furnish and deliver to the purchaser, or his duly authorized representative, a good and sufficient bond, in the penal sum of One Hundred twenty-six thousand, five hundred sixty-two dollars and fifty cents ($126,562.50), conditioned upon the faithful performance of this contract on the part of the Builders."

Just why the claims should ever have included an item of $126,562.50 on account of a performance bond required of the builders is not readily apparent.

Another statement concerning the price of the contract for Hull No. 95 adds greatly to the confusion of figures presented to the Tribunal. This statement does not purport to give the price paid by the last owner but it does give a price previously paid which is higher than the last price claimed. Under date of March 12, 1920,

[2] Norwegian Case, Documentary Evidence, page 187.

Capt. Hanssen handed to the Department of State a memorandum showing amounts paid for contracts at the time of last transfer prior to August 3, 1917. The amount shown as paid for the contract for Hull No. 95 was $1,557,000.[2]

This memorandum indicated that the contract was sold thereafter at an advance in price, but the amount of $1,507,860.28 now claimed as the last transfer price is considerably less than the amount shown as paid prior to August 3, 1917.

The foregoing comments on Claim No. 3 have been presented without any spirit of captiousness, but with a sincere desire for enlightenment. The claim is for $2,120,679.93, and from a standpoint of the large sum involved if for none of the obvious reasons, it should have better support than is afforded by the record presented by the Kingdom of Norway.

Conflicting Statements Partially Reconciled by Deduction and Inference.

It is possible by inferences and deductions which may not be justified to reconcile some of the various statements one with another, but it is respectfully submitted that the Norwegian Case should not be interpreted by process of deduction or inference, but should be presented in such a manner that all discrepancies can be explained away.

It is not possible to reconcile the figure of $1,703,568.00 shown in the tabular statement attached to the Robinson memorandum with any other figure representing the cost to the owners.

The figure of $1,960,568.88 contained in Captain Hanssen's brief of November 5, 1919 can be reconciled with the present claim by assuming that in preparing the present claim the claimants eliminated an item of $326,146.10 for expenses, interest, and commissions and also dropped out the item of $126,562.50 which presumably represented a performance bond of the builders and not of payment by the owner.

The present claim of $1,507,860.28 can be reconciled with the certified statement of Den Norske Handelsbank by first assuming that the bank figure of $1,634,422.78 erroneously included $126,562.50, and by further assuming that the following four items shown by

[2] U. S. Counter-case, Appendix, page 293.

Den Norske Handelsbank have been dropped from the claim because of duplication or for other reasons:

Commission to bank	$16,344.22
Paid in as joint deposit	126,562.50
Paid in as interest differential	10,196.77
Paid as commission for overdraft	7,265.45

In making the foregoing reconciliation it is necessary to assume that Den Norske Handelsbank on whose certificate the Norwegian Case depends, included in two places an item of $126,562.50 which should not have been included at all. The figure of $2,140,672.78 obtained by converting the 7,000,000. kroner figure shown in the prospectus of the Baltimore Steamship Company, can be reconciled with the present claim by assuming that the prospectus figure included $632,812.50 of unpaid installments to the shipbuilders.

The figure of $1,557,000.00 contained in Captain Hanssen's memorandum of March 12, 1920 purporting to show the price of the contract at the last transfer prior to August 3, 1917, cannot be reconciled with the existing claim as it is approximately $50,000 in excess of the amount now claimed.

The questionable character of Christoffer Hannevig's transactions in general is peculiarly emphasized in the case of Claim No. 3. The United States is asked to pay $2,120,679.93, the great bulk of which is on account of alleged assignments on which no consideration is shown. All of these assignments if made as explained were subject to the provision in the original contract which reads as follows:

"No assignment of this contract by the purchaser shall be valid without the written consent of the builders."[1]

The record fails to disclose any evidence of written consent by the builders to the assignments claimed.

The United States recognizes its obligation to pay full value of all the property it requisitioned on August 3, 1917. It has sought through its various agents and by the employment of special experts to determine this value and is now convinced just compensation is represented by the sum of $255,900. Its willingness to pay that sum is reaffirmed.

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[1] U. S. Case, Appendix, page 602.

CLAIM NO. 4.

1. Claimant: Vard II Steamship Company.

2. Account of: Hull No. 92, 7500 ton d. w. cargo steamer known as the "*Sacramento.*"

3. Builder: Seattle Construction & Dry Dock Company.

4. Amount Claimed: $2,731,749.47.

5. Original Contract Dated: April 3, 1916.

6. Contract Price to purchaser: $738,000, including $38,000.00 brokerage or at the rate of $98.40 per d. w. t.

7. Contract Delivery Date: August 3, 1917.

8. Percentage of Completion August 3, 1917: 59.5%.

9. Keel Laid: April 2, 1917.

10. Ship Delivered: January 28, 1918.

11. Original Owner: The Odfjell's Shipping Company.

12. Owner on August 3, 1917: K. S. Nordgreen.

13. Progress Payments by former owners: $280,000.

14. Amount conceded by the United States as just compensation: $346,900.

15. Assignments:

As claimed in Norwegian Case.

May 3, 1917 from Odfjell's Shipping Company to Finn Christensen;

June 18, 1917, Finn Christensen to S. W. Boe;

June 19, 1917, S. W. Boe to K. P. Nordgreen;

September 20, 1917, K. P. Nordgreen to Christoffer Hannevig, A/S;

September 25, 1917, Christoffer Hannevig, A/S, to Vard II Steamship Company.

Assignments as endorsed on contract.

From Odfjell's Shipping Company to Finn Christensen (no date or consideration shown).

June 19, 1917, from Finn Christensen to K. S. Nordgreen;

September 20, 1917, from K. S. Nordgreen to ———.

$2,317,102.26 Claimed for Profits Allegedly Paid in Speculation.

This claim is presented by the Norwegian Government in behalf of the Vard II Steamship Company, represented by Jacob Jacobsen, Manager. It is a claim for $2,731,749.47 to cover reimbursement for the cost of the contract for Hull No. 92 built by the Seattle Construction and Dry Dock Company. The claim is made up as follows:

Cost of contract to Vard II Steamship Company:	
Installments of contract price paid to yard and repaid to vendor	$295,200.00
Premium paid to vendor	1,649,677.26
Total	$1,944,877.26
Interest	786,872.21
Grand Total	$2,731,749.47

The claim is chiefly on account of resale profits which the Vard II Steamship Company states were paid in acquiring the contract. The United States is asked to pay the following on account of the resale premium paid to Christoffer Hannevig, A/S.

Premium paid to Hannevig, A/S	$1,649,677.26
Interest	667,425.00
Total	$2,317,102.26

Only $414,647.21 is on account of payments made to the shipbuilder, including $119,447.21 for interest.

The only evidence presented to show the payments alleged by the Vard II Company is a sworn statement by Jacob Jacobsen, which is brought to the attention of the Tribunal through its inclusion in the documentary evidence by the United States and which does not agree with the claim as presented in the Norwegian Case and also the following documents:

Christiania, September 27, 1917.

"Mr. Jacob Jacobsen,
Christiania.

"Pursuant to our conference with you we have today requested Den Norske Handelsbank to settle the cash amount on Seattle Construction No. 92.

"The bank will today charge the joint account of Messrs. Jac. Jacobsen, G. O. Aarvold, Oscar Rod and Christoffer Hannevig:---- Kr. 6,281,953.56.

"This amount will be brought forward in the following way:

The purchase amount	Kr. 7,650,000.00
Minus remaining installments, $442,800 at Kr. 3.23	Kr. 1,430,244.00
	Kr. 6,219,756.00
Plus 1% guarantee commission	Kr. 62,197.56
	Kr. 6,281,953.56

"Respectfully,

"pr. pr. Christoffer Hannevig A/S,
"(Sgd) Sven Bjork."[1]

"*Bank Statement*

Christiania den

"To whom it may concern:

"We, Den Norske Handelsbank of Christiania, hereby certify that, we for account of Mr. Jac. Jacobsen on behalf of Dampskibsaktieselskabet 'Vard II' under the date of 27th September, 1917, paid to Messrs. Christoffer Hannevig A/S of Christiania

Kr. 6,281,953.56

for the assignment of

The Seattle Construction and Dry Dock Co.,

No. 92. This contract is deposited with us as security for a loan.—

"Christiania, *September 8th, 1919.*

"Den Norske Handelsbank A/S
"Sig.
Rinde"[2]

Particular attention is called to the fact that the totals in the letter of the Hannevig Company and the certificate of Den Norske Handelsbank are identical in amount and it is to be assumed that the bank's total includes the Kr. 62,197.56 commission included in the letter of the Hannevig Company. The importance of this item will be apparent from the comment that is to follow.

The certificate of Den Norske Handelsbank, if read alone, gives the impression that the Vard II Steamship Company paid 6,281,953.56 Kroner to Christoffer Hannevig A/S on September 27, 1917, but if read in connection with the quoted letter of Christoffer Hannevig A/S the transaction assumes quite another color.

There was no Vard II Steamship Company on September 27, 1917. The company was not organized until October 18, 1917.[3]

From One Hannevig Pocket to Another Hannevig Pocket.

The letter of Christoffer Hannevig A/S suggests what was probably the real nature of the transaction. The joint account of Christoffer Hannevig, the individual, and his associates was charged with

[1] Norwegian Case, Documentary Evidence, pages 202–203.
[2] Norwegian Case, Documentary Evidence, page 203.
[3] U. S. Counter-case, Appendix, page 353.

Kr. 6,281,953.56 and a credit of Kr. 6,281,953.56 went to Christoffer Hannevig in his corporate capacity.

There is no sufficient evidence of a bona fide sale and no evidence of any actual payment of money. Instead of producing a cancelled check showing the payment of Kr. 6,281,953.56 on September 27, 1917, the Norwegian Case produces an unsworn statement from Den Norske Handelsbank *under the date of September 8, 1919*, certifying to the payment of Kr. 6,281,953.56 on behalf of a company that was not in existence at the time the payment is said to have been made.

The transaction bears all the earmarks of a scheme to swell the prospective claim against the United States and at the same time to get a loan for Christoffer Hannevig A/S. The facts concerning this loan are not clear. The certificate of Den Norske Handelsbank says:

"This contract is deposited with us as security for a loan." [1]

That the loan was the Kr. 6, 281,953.56 allegedly paid to Christoffer Hannevig A/S is indicated by another certificate from Den Norske Handelsbank, as follows:

"Den Norske Handelsbank, Christiania

"To whom it may concern:

"We, Den Norske Handelsbank, of Christiania, hereby certify that,

"Mr. Jac. Jacobsen of Christiania on behalf of the joint stock company called the Dampskibsaktieselskabet ''Vard II"' of Christiania under the date of 27th September 1917 has paid to us 1 per cent commission on Kr. 6,281,953.56 with Kr. 62,819.54, being commission for procuring funds regarding contract No. 92 with Seattle Construction & Dry Dock Co.

"Christiania, Sept. 8th, 1919.

"Den Norske Handelsbank A/S
"Sig Rinde" [2]

This commission of Kr. 62,819.54 is not to be confused with the commission of Kr. 62,197.56 which according to the other certificate of Den Norske Handelsbank was paid to Christoffer Hannevig A/S. The two together make up the Kr. 125,017.10 shown in the following statement of Jacob Jacobsen in support of the claim:

"III. In procuring funds to finance said contract the said A/S D/S A/S 'Vard II' was obliged to expend $59,497.50 for commissions in accordance with the following statement:

Guarantee Commissions (See Exhibit 3A & 5 in red.)	Kr. 125, 017. 10
Bankers' Commissions for renewals of loan	Kr. 67, 159. 81
	Kr. 192, 176. 91

@ 3.23 $59, 497.50." [3]

[1] Norwegian Case, Documentary Evidence, page 203.
[2] U. S. Counter-case, Appendix, page 278.
[3] U. S. Counter-case, Appendix, pages 275–276.

This is a mysterious feature of the case. In one bank certificate it is declared that the bank paid to Christoffer Hannevig, A/S as 1% guarantee commission the sum of Kr. 62,197.56; in another bank certificate it is declared that the bank received Kr. 62,819.54 as 1% commission for procuring funds and in the sworn statement of Jacob Jacobsen both of these sums are included as guarantee commissions paid by the Vard II Steamship Company for procuring funds, This raises a pertinent query:

Why did Christoffer Hannevig A/S receive a 1% commission for procuring funds to be paid by the Vard II Steamship Company to Christoffer Hannevig A/S?

Conflicting Statements Concerning Amount Paid for Contract.

The discrepancies in the record make it impossible to know just what amount the claimant company alleges was paid to the Hannevig Company for the contract. Den Norske Handelsbank certifies that the amount was Kr. 6,281,953.56, which at the stated rate of Kr. 3.23 is equivalent to $1,944,877.26.[1]

Jacob Jacobsen swears to the following:

"For the assignment the said A/S paid to said Messrs. Christoffer Hannevig *in actual cash the sum of $1,925,621.05*, figured on a rate of enchange of 3.23 as of the 25th day of September 1917, the date of said assignment."[2]

The Jacobsen affidavit continues:

"Of the said sum of $1,925,621.05 paid by A/S D/S A/S Vard II as aforesaid, *the sum of $1,630,421.05 represents the bonus paid for the said contract*, and the sum of $295,200 represents the installments of the purchase price theretofore paid to the shipbuilder and commission of $15,200. to Page Brothers according contract paid by former owner of said contract."[3]

The Norwegian Case does not contain any sworn statement from Mr. Jacobsen, but does have a statement by Mr. Jacobsen which treats generally of the atmosphere at the time. It does not correspond with the affidavit made by Mr. Jacobsen in support of the claim as submitted to the Shipping Board. It has been necessary to supplement the Norwegian Case by the introduction of Mr. Jacoben's affidavit.

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[1] Norwegian Case, Documentary Evidence, page 203.
[2] U. S. Counter-case, Appendix, page 275. Italics ours.
[3] U. S. Counter-case, Appendix, page 275. Italics ours.

The amount of $1,925,621.05 to which Jacobsen testifies is $19,256.21 less than the amount as certified by Den Norske Handelsbank. This $19,256.21 is exactly equivalent at the exchange rate of Kr. 3.23 to the Kr. 62,197.56 which Den Norske Handelsbank included as having been paid by the Vard II Steamship Company to Christoffer Hannevig A/S. This illustrates the impossibility of ascertaining from the evidence furnished just what was paid for the contract.

The Norwegian Case states that $1,944,877.26 was paid to the vendor, Christoffer Hannevig A/S, and that $1,649,677.26 of this amount was a "premium paid to vendor."[1]

Again on page X the Norwegian Case states the cost of the contract as $1,944,877.26.

In the tabular statement certified to by A. H. Whan & Company and printed opposite page 161 of the Norwegian Case, these figures are shown:

Premium	$1,649,677.26
Paid installments	295,200.00
Total	1,944,877.26

If the sworn statement of Jacob Jacobsen is correct, the cost of the contract was $19,256.21 less than claimed in the Norwegian Case.

A close examination of the evidence before the Tribunal leaves the following questions unanswered:

1. If the contract was sold, what was the price paid?
2. To whom did the Vard II Steamship Company pay Kroner 62,197.56 as a commission for procuring funds?
3. What was the nature and amount of the loan for which the contract was deposited as security?
4. If the loan was procured by the Vard II Steamship Company, why was a commission of 1% given to Christoffer Hannevig A/S, as indicated by the Hannevig Company's letter?

History of Contract and Assignment.

The contract for Hull No. 92 was made between the Seattle Construction & Dry Dock Company and Odfjell's Shipping Company under date of April 3, 1916. It provided for a steel cargo steamer of 7,500 d. w. t. at a price of $700,000. plus a brokerage commission of $38,000. to Page Brothers, the total of $738,000. being equivalent

[1] Norwegian Case, page 166.

to $98.40 per d. w. t. It is the unpaid balance of the commission of $38,000. on which the claim of Page Brothers before this Tribunal is based. The progress payments to the shipbuilder before requisition were as follows:

April 24, 1916	$70,000
April 5, 1917	70,000
June 23, 1917	70,000
Total	$210,000

On August 23, 1917, the shipbuilder received a fourth payment of $70,000, making the total paid by former owners $280,000.

The copy of the contract as printed in the Norwegian Case, and as attached to the sworn statement of Jacob Jacobsen is an unsigned document.[1]

The unsigned copy is certified by Sig. Rinde, President of Den Norske Handelsbank, as being a true copy.[2]

From this it would appear that Den Norske Handelsbank had loaned its money on an unsigned and unattested document.

The contract bears endorsements showing three assignments, as follows:

From the Odfjell Shipping Company to Finn Christensen. (No date or consideration is shown.)

From Finn Christensen to K. S. Nordgreen under date of June 19, 1917 (No consideration shown).

From K. S. Nordgreen to ——— under date of September 20, 1917.

This last assignment as printed in the Norwegian Case reads as follows:

"Transferred without recourse to me to ———
"Bergen den 20, September 1917

"p. p. K. S. Nordgreen
"Olaf Jonasen
"Sign"[3]

It will be noted that this final assignment shown on the contract does not mention Christoffer Hannevig or anyone else as assignee, but the Norwegian Case shows on undisclosed authority that the assignment was to Chr. Hannevig, A/S. The assignments on the

[1] Norwegian Case, Documentary Evidence, page 198. U. S. Counter-case, Appendix, page 274.
[2] Norwegian Case, Documentary Evidence, page 199.
[3] Norwegian Case, Documentary Evidence, pages 198–199.

contract fail to agree with the assignments shown in the Norwegian Case as follows:

May 3, 1917 from Odfjell's Shipping Company to Finn Christensen;

June 18, 1917 Finn Christensen to S. W. Boe;

June 19, 1917 S. W. Boe to K. P. Nordgreen;

September 20, 1917, K. P. Nordgreen to Chr. Hannevig, A/S;

September 25, 1917, Chr. Hannevig A/S to Vard II Steamship Co.[1]

The assignments as shown in the Norwegian Case agree with the sworn statement by Jacob Jacobsen.[2]

Unfortunately the Norwegian Case has failed to produce any evidence substantiating the assignments to S. W. Boe and from S. W. Boe. Satisfactory confirmation of these assignments is called for by the fact that they appear to be in direct conflict with the certified copy of Finn Christensen's assignment as endorsed upon the contract.

The assignment on the contract reads as follows:

"Transferred without recourse to me to
"K. S. Nordgreen
"Bergen den 19 June 1917

"Finn Christensen
"(Sign)"[3]

Mr. Boe is dead and cannot testify, but it should have been possible in the four years available for the preparation of this claim to obtain some evidence of an acceptable nature showing that Finn Christensen assigned the contract to Mr. Boe and that Mr. Boe assigned it to K. S. Nordgreen, and explaining why Finn Christensen after assigning the contract on June 18, to S. W. Boe again assigned the contract on June 19 to K. S. Nordgreen.

In giving support for the assignments which it is claimed were made to Mr. Boe and by Mr. Boe the Norwegian Case has added further mystery. Mr. Jacobsen in his sworn statement of September 6, 1919, said:

"That on the 18th of June, 1917, said Finn Christensen, Esq., assigned said contract to S. W. Boe, Esq. Bergen. The original assignment cannot be produced because see below:

"That on the 19th day of June 1917, said S. W. Boe, Esq. assigned said contract to K. P. Nordgreen, Bergen. *The original assignment cannot be produced because S. W. Boe, Esq. is dead, and I have not*

[1] Norwegian Case, page 166.
[2] U. S. Counter-case, Appendix, page 274.
[3] Norwegian Case, Documentary Evidence, page 199.

been able yet to obtain documents referring to above two assignments. The original contract is assigned from Christensen to Nordgreen direct."[1]

It appears that not long after the above statement was made, the claimants did obtain some documents referring to the Boe assignments. The first was a statement from Th. Fronsdal, reading as follows:

"I hereby certify that I, on the 13th of June, 1917, as broker mediated the sale of a new-building contract for a steamer about 7500 tons d. w. by the Seattle Construction and Dry Dock Company, (said Yard's building No. 92) contracted for delivery on August 3, 1917, from Mr. Finn Christensen to Mr. Sigurd W. Boe, in the amount of $240 (two hundred forty dollars) per ton, at a rate of Kr. 3.45 per dollar.

"Likewise, on the following day, the 14th of June, 1917, I mediated sale of the same contract from Mr. Sigurd W. Boe to Mr. K. S. Nordgreen at a price of $261 (two hundred sixty one) per ton, at a rate of Kr. 3.41 per dollar.

"Bergen, September the 18th, 1919.

"(sgd.) Th. Fronsdal."[2]

This statement failed to agree in date with Jacobsen's sworn statement, but before transmitting the Fronsdal statement, Jacobsen obtained another statement which attempted to explain the discrepancy. On September 23, 1919, Jacobsen and Aarvold transmitted both statements to the Christiania Group of Norwegian Ship Owners. The second statement was described as a letter from K. S. Nordgreen and read as follows:

"*Seattle Construction No. 92.* Referring to your favor of the 27th ult., I beg to inform you that no bill of sale was issued in connection with the sale of the above mentioned contract from Mr. Finn Christensen to Mr. Sigurd W. Boe, and from him to me, but you will see from the enclosed attestations from Messrs. Th. Froensdahl and Co., that these sales took place on the 13th and 14th of June, 1917. *By a mistake the dates have previously been given as the 18th and 19th of June, 1917.*

"The original contract was transferred directly from Mr. Finn Christensen to me, and Mr. Boe's profit on the sale was paid directly to him from me.

"Mr. Sigurd W. Boe has since passed away and I do not believe that other documents in regard to this contract will be found among his papers."[3]

The enclosure referred to was the Fronsdal letter already quoted.

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[1] U. S. Counter-case, Appendix, page 274. Italics ours.
[2] Norwegian Case, Documentary Evidence, page 200.
[3] Norwegian Case, Documentary Evidence, page 200. Italics ours.

Although it is admitted in the Norwegian Case that Christensen assigned the contract directly to Nordgreen, so far as the assignment on the contract itself is concerned, there is no explanation from Finn Christensen telling of any intermediate assignments to Boe and from Boe.

It is suggested that Mr. Nordgreen could have given far better substantiation to the alleged assignments to and from Boe if he had offered some contemporaneous document bearing on the subject, such, for instance, as the cancelled check for the profits which he states he paid directly to Mr. Boe. These profits amounted to the substantial sum of $157,500 and there should be some evidence of the payment of such a large amount.

The Alleged Assignment to Christoffer Hannevig A/S.

Though Mr. Nordgreen is quoted to explain how he bought the contract from Mr. Boe, he is not quoted in any explanation of the manner in which the contract was transferred from him to Christoffer Hannevig A/S. The Norwegian Government has failed to produce any assignment to the Hannevig Company, the only assignment from Nordgreen being in blank.

Whether or not the contract was ever assigned to Christoffer Hannevig, A/S, that company is shown to have given an assignment on September 25, 1917. That assignment did not even purport to sell or assign the contract. It read as follows:

"We hereby transfer to Mr. Jac. Jacobsen representing a new starting Company (called Vard II) *all our rights and obligations concerning a contract* at the Seattle Constructing & Dry Dock's building No. 92 without any further responsibility to us.

"Christiania Sept. 25, 1917.

"pr. pr. CHRISTOFFER HANNEVIG, A/S
"(Sign) SVEN BJORK".[1]

It is this assignment that is offered by the Norwegian Case to justify a demand upon the United States for the payment of $2,317,102.26, representing the alleged premium paid for the assignment with interest thereon.

It is an assignment in which the assignor does not even pretend ownership of the contract, and is made to the representative of a company not then in existence.

[1] Norwegian Case, Documentary Evidence, page 201. Italics ours.

It is to be noted that the contract for Hull No. 92 contains the following provision:

"No assignment of this contract by the purchaser shall be valid without the written consent of the builders."[1]

There is no evidence that the written consent of the builders was ever obtained for any of the assignments. The evidence on this claim makes it very questionable whether the assignment from Christoffer Hannevig, A/S was made in good faith. The fact that the payments certified to by Den Norske Handelsbank went from an account in which Christoffer Hannevig had a joint interest to the account of Christoffer Hannevig, A/S, raises a doubt whether the alleged assignment to the Vard II Steamship Company was a bona fide sale or only a colorable transaction, conceived as a part of a promoters' plan first to unload upon the public and ultimately to build up a large claim against the United States.

The Vard II Steamship Company.

The organization of the Vard II Steamship Company was never even in the prospectus stage until September 25, 1917, almost two months after the requisition of Hull No. 92. It was well known among shipping men in Norway that there was little prospect of ever securing delivery on the contract. Mr. Jacobsen, the Manager, says in his statement in the Norwegian Case:

"* * * it is quite evident that the purchase was not made as a speculation with the idea of reselling the contract.

"The intention was, as has been said, to keep the new vessel and run same, * * *"[2]

This statement is in sharp contrast with this paragraph quoted from the prospectus:

"The promoters reserve the right to sell the contract if a favorable offer is received."[3]

Mr. Jacobsen's statement in the Norwegian Case contains the following statement:

"The belief that the United States in deciding to requisition ships and building contracts only intended to acquire the use of the vessel against a reasonable freight remuneration, was general among everyone in this country having any connection with maritime affairs."[4]

[1] U. S. Case, Appendix, page 603 at 607.
[2] Norwegian Case, page 200.
[3] Norwegian Case, Documentary Evidence, page 195.
[4] Norwegian Case, page 198.

The facts are as shown by the Norwegian Case that the members of the Norwegian Shipowners Association "and all parties concerned" had been officially notified nine days before the organization of the Vard II Steamship Company that the United States had requisitioned for title.[1]

That notice was sent out and published October 9, 1917, and the Vard II Steamship Company was not organized until October 18, 1917.

Obviously, the purpose of the promoters in proceeding with their organization after this due notice could not have been to "keep the new vessel and run same" as Mr. Jacobsen says.

The Norwegian Case has failed to explain why the promoters of this enterprise proceeded after the notice of October 9, 1917 to perfect their organization and to permit the distribution of its shares into the hands of many small shareholders.[2]

Powers of Attorney Show Three Possible Owners of Contract.

Further evidence that the contract for hull No. 92 was being used in transactions that made its ownership doubtful is found in the U. S. Case, Appendix which shows powers of attorney signed by three separate parties, each admittedly a possible owner of the contract.

On February 15, 1919, K. S. Nordgreen and Christoffer Hannevig, A/S, signed a joint power of attorney authorizing *the executive committee chosen at the constituent assembly of the Hannevig Group*, to conclude an agreement of settlement with the United States. This power of attorney contained the following:

"The expenses * * * shall be borne by that one of us who, upon the final settlement (judicial decision, award of arbitrators or amicable compromise), may be regarded as the lawful owner of the contract."[3]

Does this look as if there had been a final bona fide sale of the contract? Why, if the contract had been sold to Hannevig by Nordgreen and resold by Hannevig to the Vard Steamship Company, was it necessary for Nordgreen to sign a power of attorney and admit that he might ultimately be adjudged to be the owner of the contract?

There must have been some compelling reason for this. Norway should explain why Nordgreen was called upon to sign such an agree-

[1] Norwegian Case, pages 66–67.
[2] Norwegian Case, page 199.
[3] U. S. Case, Appendix, page 682.

ment. A very plausible explanation seems to be that Nordgreen had some undisclosed understanding with Hannevig by which he was compelled to assume responsibility for a contract which had been "sold" only in a limited sense.

However the mystery grows more profound as the United States Case Appendix is studied, for it shows still another power of attorney signed on February 21, 1919, six days after the first, by Christoffer Hannevig, Inc., and the Vard II Steamship Company. This also authorized the executive committee of the Hannevig Group to make a settlement and, also, in language like the Nordgreen-Hannevig power of attorney, agreed that the expenses should be borne by Christoffer Hannevig A/S, or the Vard II Steamship Company, whichever might be considered upon final settlement to be the lawful owner of the contract.[1]

The United States must respectfully urge that these powers of attorney even if standing alone would discredit the good faith of the transactions by which the Vard II Steamship Company became the claimant, but taken in connection with other evidence, they serve as convincing indications that these alleged sales were not final in any sense of the word.

Only Business of Vard II Steamship Company is to Collect a Claim.

Evidence that the Vard II Steamship Company was never a "going" Steamship Company is found in the sworn statement of Jacob Jacobsen who makes it quite clear that the sole purpose of this company was to deal in the contract for hull No. 92, and that its only business is to collect a claim from the United States. Under date of September 6, 1919, Jacobsen in an affidavit said:

"The only purpose of organizing said company was to operate the said Steamship No. 92. Said steamship having been requisitioned by the United States of America, *there is no further purpose for the existence of the company other than to collect just compensation from the United States of Amercia and distribute same among stockholders.*"[2]

The company was not conceived until long after requisition and not organized until about two and a half months after requisition. It is submitted that at best the stockholders were, in the language of

[1] U. S. Case, Appendix, pages 682–683.
[2] U. S. Counter-case, Appendix, page 275. Italics ours.

the Norwegian Court, engaged in "the purchase of a chance," and the promoters were endeavoring to line their own pockets at the expense of the public or the United States.

The United States recognizes an obligation to pay for the property requisitioned on August 3, 1917, and is willing to pay the full value of the things requisitioned; that value it is submitted is not in excess of $346,900.

CLAIM NO. 5.

1. Claimant: The Sorlandske Lloyd Corporation.

2. Account: Hull No. 17, an 8800 D. W. T. cargo steamer, formerly known as the "*Elizabeth Gibbs*," now "*Western Queen*."

3. Builder: Skinner and Eddy Corporation.

4. Amount Claimed: $2,273,753.21.

5. Original Contract Dated: October 9, 1916.

6. Contract price: $1,100,000, or $125 per D. W. T.

7. Contract Delivery Date: April 15, 1918.

8. Percentage of completion August 3, 1917: 11.9%.

9. Keel laid: January 2, 1918.

10. Ship Delivered: April 25, 1918.

11. Original owner: B. Stolt Nielsen.

12. Owner on August 3, 1917: D/S Storborg.

13. Progress payments by former owners: $385,000.

14. Amount conceded by the United States as just compensation: $400,800.

15. Assignments:

As claimed in Norwegian Case:

June 18, 1917, from B. Stolt Nielsen to Storborg Steamship Company,

September 19, 1917, Storborg Steamship Company to Sorlandske Lloyd Company.

As shown in Documentary Evidence submitted by Kingdom of Norway:

July 18, 1917, B. Stolt Nielsen to Storborg Steamship Co.,

September 19, 1917, Storborg Steamship Company to Sorlandske Lloyd Corporation.

Additional alleged assignments as formerly claimed by Christoffer Hannevig:

Storborg Steamship Company, J. Ringen, to Christoffer Hannevig.

Sorlandske Lloyd Company to Baltimore & South American Navigation Corporation.

Hannevig Appears Again.

This is another claim in which Christoffer Hannevig appears, as is shown by the following list of directors of the Sorlandske Lloyd Corporation:

Karl A. Thorbjornsen, Manager and Chairman of Board,
Anthon Olafsen,
Harry Borthen,
Christoffer Hannevig.[1]

The claim is made up as follows:

Cost of contract to Sorlandske Lloyd Co:	
Instalments of contract price paid to yard and repaid to vendor	$385,000.00
Premiums paid to vendor	1,232,000.00
Total	1,617,000.00
Interest	656,753.21
Grand total	2,273,753.21

The Sorlandske Lloyd Company bases its right to claim upon an assignment dated September 19, 1917. The price stated in the assignment was $265. per D. W. T.

Proof of Payment Lacking.

Neither in the Norwegian Case nor in the documentary evidence submitted by the Kingdom of Norway is there any conclusive evidence that the Sorlandske Lloyd paid the amounts claimed, but in the data attached to the original claim as sworn to by Karl A. Thorbjornsen, there is the usual certificate from Den Norske Handelsbank, *under date of August 26, 1919*, showing payments by the Sorlandske Lloyd Corporation, as follows:

Payment for contract	$1,617,000.00
Accrued interest Kr	795,844.32
Bank commissions at 2%, Kr	113,190.00
Interest on bank commissions Kr	15,916.85
Bank commissions at 1% Kr	99,827.70
Interest on bank commission Kr	9,250.26[2]

This certificate makes the transaction look far more like a loan than a purchase of a ship contract. Another certificate from Den

[1] U. S. Counter-case, Appendix, pages 349–350.
[2] U. S. Counter-case, Appendix, page 283.

Norske Handelsbank states that the contract "has been lodged in our custody."[1]

Not a Cent Paid in Claimant's Own Money.

That the Sorlandske Lloyd Corporation did not pay out one cent of its own money is evident if the bank's statement is correct. The assignment states that the rate of exchange was to be Kr. 3.50.[2]

At this rate $1,617,000. would be equivalent to Kr. 5,659,500. Two per cent of Kr. 5,659,500 is Kr. 113,190, which is the amount the bank certifies was paid in advance as a 2% bank commission. This would indicate that whatever the transaction was, every penny was advanced by the bank. It is evident that even the bank commission was borrowed, for the bank certifies that the Sorlandske Lloyd has paid Kr. 15,916.85 as interest on this commission. Similarly, the 1% per annum commission must have been borrowed, for the bank certifies that on this, also, the company paid a commission.

Who received the money allegedly paid for the contract is not disclosed. There is no receipt from the Storborg Steamship Company. The bank certificate does not indicate the recipient of the money. There are no cancelled checks offered as evidence of payments.

A Discrepancy in Exchange.

A strange discrepancy that is altogether unexplained relates to the rate of exchange. Karl A. Thorbjornsen in his affidavit attached to the claim submitted to the Shipping Board declares:

"For the assignment the said A/S paid to said Dampskibsaktieselskabet Storborg in actual cash the sum of $1,617,000—figured on a rate of exchange of 3.50—Kr. 5,659,500—as of the 26th day of September 1917, the date of said assignment."[3]

The rate of Kr. 3.50 agrees with the assignments from the Storborg Steamship Company.[2]

However, two other documents attached to Thorbjornsen's affidavit were as follows:

"A/S Sorlandske Lloyd, Christiania 2 Septbr —19

"The rate of exchange on all Krone payments from Den Norske Handelsbank is 3.23 in accordance with the Christiania Exchange rate on the 26th September, 1917, when these payments were made.

"A/S Sorlandske Lloyd
"Karl A. Thorbjornsen"[4]

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[1] U. S. Counter-case, Appendix, page 283.
[2] Norwegian Case, Documentary Evidence, page 210.
[3] U. S. Counter-case, Appendix, page 280.
[4] U. S. Counter-case, Appendix, page 284.

"I do hereby certify that the Christiania Exchange rate on the 26th Septbr. 1917 was Kr. 3.23=1 dollar.

"Aug. Andersen,
"Chartered Accountant."[1]

There is a difference of Kr. 436,690 between the rate of 3.23 and 3.50. What became of this large sum is not apparent.

A. H. Whan & Co. certify that the payments were Kr. 5,659,500 at the rate of Kr. 3.50.[2] That this was the rate used is indicated by the certificate of Den Norske Handelsbank.

Why the excessive rate of 3.50 should have been specified in the assignment or paid is undisclosed. Most of the other transactions involved in the Norwegian claims were at rates ranging from 3.20 to 3.29.

The Norges Bank certifies that the Sept. 1917 rate as established by the Christiania Bourse was Kr. 3.28.

It was not until November 1918 that the rate reached as high as 3.50.[3]

Another peculiar feature of the case is that while Thorbjornsen's affidavit fixes the rate of exchange at 3.50, it uses the rate of 3.23 in converting Kr. 213,017.70 paid as commission into $65,951.

The assignment from the Storborg Steamship Company was far-sighted, to say the least, in fixing the kroner rate at a figure not reached for more than a year after the date the assignment bears.

Discrepancy in Purchase Price—$110,000.

Another discrepancy between the claim and the assignment is in the matter of the purchase price. The Norwegian Case states that the amount paid to the vendor was $1,617,000.[4]

The assignment says:

"Of the purchase sum $1,727,000 are to be paid in cash after the rate of exchange of 3.50 in 'Den Norske Handelsbank' Christiania, on full and proper transfer of the building contract.

"The balance $605,000 represents the remaining instalments to the builders, which instalments the purchaser hereby agrees to pay the builders."[5]

The Sorlandske Lloyd Corporation offers what may be intended as an explanation of this discrepancy in the following statement:

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[1] U. S. Counter-case, Appendix, page 284.
[2] Norwegian Case, opposite page 161.
[3] U. S. Counter-case, Appendix, page 427.
[4] Norwegian Case, pages X, 165, and 204.
[5] Norwegian Case, Documentary Evidence, page 210.

"*Statement Concerning Purchase Price.*

"A/S Sorlandske Lloyd, Christiania.

"S. S. ELIZABETH GIBBS.

"The original contract price $125 per ton d. w. 8800 tons		$1,100,000.00
"A/S Sorlandske Lloyd as shown by bill of sale paid $265 per ton d. w.		2,332,000.00
"Difference $140 per ton d. w.		$1,232,000.00
"5 instalments as per contract—		
1st instalment	$55,000.00	
4 instalments at 110,000.00	440,000.00	
		495,000.00
Total		$1,727,000.00
"Less 5th installment refunded by seller		110,000.00
		$1,617,000.00

"The above named amount was paid for account of A/S Sorlandske Lloyd by Den Norske Handelsbank, Christiania.

"A/S SORLANDSKE LLOYD
"(Sign) KARL A. THORBJORNSEN."[1]

From this statement it might be deduced that the Sorlandske Lloyd Corporation had actually paid $1,727,000. to the Storborg Company, but that that company had refunded $110,000. It is difficult to understand the statement that the $110,000 was refunded by the seller, as the certificate of Den Norske Handelsbank shows that only $1,617,000 was paid for the contract.

A Hannevig Organization.

Although the Norwegian Case is careful to leave Christoffer Hannevig out of the record relating to claim No. 5, the claimant company is nevertheless, a Hannevig organization. Karl A. Thorbjornsen's statement printed in the Norwegian Case is significant in its omission of Hannevig. Mr. Thorbjornsen says:

"As above mentioned the company was formed in July, 1916, and the board of directors was as follows:

"Mr. Anth. Olafsen, Mr. Harry Borthen, and Mr. A. Thorbjornsen, the latter being also managing owner."[2]

The Norwegian Counter-case argues that Christoffer Hannevig is irrelevant to the claims, yet it would seem that he was regarded as having embarrassing relevance when the Norwegian Case was prepared; otherwise, there is no apparent explanation for Mr. Thorb-

[1] Norwegian Case, Documentary Evidence, pages 210–211.
[2] Norwegian Case, page 205.

jornsen's failure to include the most prominent member of his board of directors.

The Commercial Register of the City of Christiania is not as reticent, for it declares that Christoffer Hannevig is one of the four directors.[1]

Mr. Thorbjornsen, himself, is the same individual who is identified with Hannevig in two of the alleged sales of contracts for ships being built at the New Jersey Shipbuilding Co. He was a director in the Baltimore Steamship Company which is said to have bought Hull No. 95 through Hannevig.[2]

Harry Borthen is the same Harry Borthen who is claiming as an individual under Claim No. 14 on account of one of Hannevig's contracts. Borthen was also a director in the Ostlandet Steamship Company, which bought the contract on which it is claiming from Christoffer Hannevig A/S.[3]

The Statement of Thorbjornsen says:

"The Sorlandske Lloyd Corporation was formed in July, 1916, at the initiative of the writer, and in this connection I beg to refer to the accompanying prospectus. * * * A list of the company's shareholders is attached."[4]

Neither the prospectus nor the list of shareholders is printed in the Norwegian Case. It would be of interest to know what they disclose concerning Hannevig's connection with the Corporation.

Claimant's Remarkable Prevision.

Mr. Thorbjornsen justifies the purchase of Hull No. 17 and also Hull No. 203 which is covered by Claim No. 12, by claiming that it was necessary to replace the S. S. *Pluton*. He says of the *Pluton:*

"The vessel continued to run in the above mentioned trade until it was torpedoed on the 9/9/1917. Maritime declaration in connection with the torpedoing is attached. It was an absolute necessity for the company to obtain new tonnage and the American contracts then offered the best means of satisfying the company's requirements. *The New Jersey Shipbuilding Contract No. 203 was therefore purchased at $210. per ton, and also Elizabeth Gibbs No. 17 from Skinner & Eddy Corporation.*"[5]

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[1] U. S. Counter-case, Appendix, page 350.
[2] U. S. Case, Appendix, page 679; U. S. Counter-case, Appendix, page 347.
[3] U. S. Counter-case, Appendix, pages 349–350.
[4] Norwegian Case, pages 204–205.
[5] Norwegian Case, page 206. Italics ours.

Chronology is apparently reversed to create the belief that both these contracts were bought out of "absolute necessity"[1] to replace the *Pluton*, torpedoed *September 9, 1917*.

Though Mr. Thorbjornsen states that the contract No. 203 was "therefore purchased," it appears that this contract was actually acquired by Thorbjornsen's company on August 30, 1917,[2] about ten days before the destruction of the *Pluton*. Also, on August 30, 1917, Mr. Thorbjornsen acquired another Hannevig contract, for Hull No. 205,[3] so that he already had available contracts for tonnage to replace the *Pluton* before the *Pluton* was sunk.

The character of the "absolute necessity" which compelled Mr. Thorbjornsen to obtain new tonnage is indicated by the fact that the contract for Hull No. 205 was sold by Thorbjornsen on October 1, 1917.[4]

What is Sorlandske Lloyd Corporation Claiming?

The claim as presented in the Norwegian Case is for $2,273,753.21, including $1,617,000 purchase price and $656,753.21 interest.[5]

However, the Norwegian Counter-case in its Appendix presents the Norwegian Agent's estimate of "expenses of claimants incurred in purchasing contracts and not hitherto presented. This includes the following for claim No. 5:

Bank Commissions, Sept. 26, 1917–April 11, 1922	Kr. 440,102	
Traveling expenses	" 29,620	
Operating expenses Sept. 26, 1917–April 11, 1922	" 181,457	
Total		Kr. 651,179
Bank Commissions (Estimated) April 11, 1922–Sept. 1, 1922	Kr. 80,575	
Operating expenses April 11, 1922–Sept. 1, 1922 estimated	" 12,533	
Total		93,108
Grand total		Kr.[6] 744,287

It is not stated whether or not the above amounts are to be added to the claim.[7]

[1] "Here again we are confronted with necessity—not 'stark' this time, but still necessity," (Norwegian Counter-case, page 36.)—in fact, "absolute necessity." (Norwegian Case, page 206.)

[2] Norwegian Case, Documentary Evidence, page 278.

[3] Norwegian Case, Documentary Evidence, page 285.

[4] Norwegian Case, Documentary Evidence, page 286.

[5] Norwegian Case, pages 167, 204, and X.

[6] Norwegian Counter-case, Appendix, page 244.

[7] See Norwegian Counter-case Conclusion 8.

It is respectfully submitted that the record in this case does not establish any claim on behalf of the Sorlandske Lloyd Corporation. The evidence produced is intended to support a claim not for what the United States requisitioned, but for losses allegedly incurred in a transaction that at best was a hazard undertaken by its promoters with full knowledge that the Fleet Corporation had requisitioned the ship covered by the contract on which the claim is based.

Hannevig Claimed Ownership for His Dummy Corporation in December 1917 and January 1918.

There are many reasons for questioning whether the Sorlandske Lloyd Corporation is a bona fide owner of the contract for Hull No. 17.

Christoffer Hannevig, whose name the Norwegian Case has so sedulously kept out of this claim, claimed ownership of the contract.

As early as October 8, 1917, the builders, the Skinner & Eddy Corporation, wrote to the Fleet Corporation as follows:

"Gentlemen: S. S. "Elizabeth Gibbs." We have to inform you that we have a letter from Christoffer Hannevig, Inc., stating that their Mr. Christoffer Hannevig, of Christiania, Norway, is now the owner of the vessel contracted with us, known as the S. S. "Elizabeth Gibbs."[1]

On the strength of this letter, the Fleet Corporation served a number of notices on Hannevig and on his representative, R. J. Bullowa.

The Skinner & Eddy Corporation wrote later, on October 23, 1917, as follows:

"Gentlemen: Re S. S. "Elizabeth Gibbs." Replying to your valued favor of the 16th inst.

We were officially notified by the original purchaser, Mr. B. Stolt-Nielsen, Haugesund, Norway, that this steamer was sold to J. Ringen, Bergen, Norway. We later received a communication from Christoffer Hannevig, Incorporated, New York, advising that Christoffer Hannevig, of Christiania, Norway, owned this vessel. We were, however, never in receipt of official advice from the original purchaser confirming Mr. Hannevig's statement."[2]

From this it appears that Hannevig claimed to be the owner.

On November 28, 1917, Bullowa wrote to the Fleet Corporation, saying:

"* * * I desire to advise you that I have taken this matter up with Mr. Christoffer Hannevig and he advises me that he did not

[1] U. S. Case, Appendix, page 468–469.
[2] United States Case, Appendix, p. 475–76.

purchase this vessel, but his understanding is that she was owned by the Soerlandske Lloyds." [1]

Hannevig should have had something more definite than an "understanding."

It was not until December 5, 1917, that Christoffer Hannevig, A/S replied to a notice from the Fleet Corporation. In this, he did not mention the Sorlandske Lloyd Corporation, but claimed ownership for his dummy corporation, the Baltimore South American Navigation Co. His letter was as follows:

"DEAR SIRS: Skinner & Eddy Corporation. In receipt of your favor of 16th October, contents of which we have carefully noted, we have sent a copy of your letter re requisitioned vessel "*Elizabeth Gibbs*" to Baltimore Southamerican Navigation Co., as this corporation has taken over this steamer." [2]

On December 5, 1917, the same day Hannevig, A/S, wrote from Norway, Mr. Bullowa wrote to the Fleet Corporation giving the Sorlandske Lloyds' address.[2]

On December 6, 1917, the Fleet Corporation cabled the American Consul at Christiania, Norway, as follows:

"Referring to corporations letter October sixteenth Soerlandske Lloyds now reported owner Skinner Eddy hull *Elizabeth Gibbs* stop Cable date assignment to them." [3]

The Consul replied as follows:

"Skinner Eddy hull *Elizabeth Gibbs* assigned to Soerlandske Lloyds September nineteenth has since been assigned to Baltimore South American Navigation Company date not known here now." [3]

Hannevig Claims Ownership Again.

On January 11, 1918, Christoffer Hannevig, as Vice-president of the Baltimore & South America Corporation, wrote to the Fleet Corporation as follows:

"We have to acknowledge receipt of your favor of the 8th instant, and in reply beg to say that our Mr. Christoffer Hannevig is a director of Sorlandske Lloyd, Manager Karl A. Thorbjornsen, Christiania, who has assigned this vessel to the Baltimore & South America Navigation Company. This was done in September, 1917. We have no copy of the agreement, but shall be pleased to get whatever you require from Christiania. So kindly advise us if you require anything further in order that we may cable Christiania to forward everything at the same time." [3]

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[1] U. S. Counter-case, Appendix, page 89.
[2] U. S. Case, Appendix, page 482.
[3] U. S. Case, Appendix, page 483.

It is submitted that this correspondence, all of which is brought to the attention of the Tribunal by the United States only, is sufficient to raise a serious question with respect to the ownership of this claim and the relations and inter-relations of Christoffer Hannevig, his "corporate alias," the Baltimore & South American Navigation Company, and the claimant company, in which he was also a director. The Norwegian Counter-case makes the positive assertion that "the contracts in claims 3 and 5 were never owned by Christoffer Hannevig or any of his interests." [1] It is submitted that the evidence which has been produced by the United States warrants the Tribunal in asking an "oral explanation" [2] from the Agent of Norway as respects the accuracy of this statement, the complete history of the apparent acquisition of title by the Sorlandske Lloyd Corporation, and the present equitable ownership of the claim.

The United States recognizes an obligation to pay for the property it took, and it stands ready to pay $400,800 as representing the value of the requisitioned property.

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[1] Norwegian Counter-case, pages 81–82.

[2] Special Agreement of June 30, 1921. Article III, paragraph three. U. S. Case, Appendix, page 3 at 5.

CLAIM NO. 6.

1. Claimant: The Ostlandet Steamship Company.

2. Account: Hull No. 2, an 8800 D. W. T. cargo steamer formerly known as the "*Santiam*," now the "*Westbrook*."

3. Builder: Columbia River Shipbuilding Company as sub-contractor for Northwest Steel Company.

4. Amount Claimed: $3,363,311.07,

5. Original Contract Dated: October 14, 1916,

6. Contract price: $1,170,400 or at rate of $133 per ton,

7. Contract Delivery Date; August 31, 1917,

8. Percentage of Completion August 3, 1917: 54.5%,

9. Keel laid: April 26, 1917,

10. Ship Delivered: March 30, 1918,

11. Original Owner: Willy Gilbert,

12. Owner on August 3, 1917: Lott Steamship Co.,

13. Progress payments by former owners: $1,053,360.00,

14. Amount conceded by the United States as just compensation: $1,184,700.

15. Assignments as Claimed in Norwegian Case:

October 13, 1916, from Willy Gilbert to Leif Erichsen,

April 12, 1917, Leif Erichsen to Sverre Hanssen, Inc.,

June 12, 1917, Sverre Hanssen, Inc., to Lott Steamship Co.,

September 17, 1917, Lott Steamship Co., to Christoffer Hannevig, A/S,

September 17, 1917, Christoffer Hannevig A/S to Ostlandet Steamship Company.

A Hannevig Transaction.

Christoffer Hannevig, A/S, acquired the contract in this case on September 17, 1917, and sold it the same day to the claimant, Ostlandet Steamship Company. Ostensibly, Hannevig has no relationship to the Ostlandet Steamship Company, but examination of the record discloses that Hannevig's associate Harry Borthen is one

of the four directors of the claimant company,[1] and that Christoffer Hannevig A/S engineered the arrangement by which the contract was acquired.[2] Also, it is noted that Tryggve Sagen, Manager of the Ostlandet Company is the same Tryggve Sagen through whose hands the contracts for Hannevig's Hulls 1013 and 1014 passed on their way from Hannevig to the present claimants under claims 10 and 11.

A Shoestring Venture.

According to a certification of the Klaveness Bank, the Ostlandet Company had incurred an expense of Kr. 9,250,178.76 up to Sept. 2, 1919 on account of the acquisition of the contract for the "*Santiam*." Of this total, Kr. 8,177,083.20 is shown as the purchase price and Kr. 1,073,095.56 is set down as commissions, discounts, stamps and registration expenses.[3]

The same certificate shows that Kr. 8,000,000, was a loan.

The following statement by Tryggve Sagen shows that only Kr. 177,083.20 of the purchase price alleged was from funds not obtained from the bank:

"Statement of Interest on payment in excess of Bankloan.

"Price paid for contract	Kr.	8,177,083.20
"Loan in Klaveness' Bank A/S	"	8,000,000.00
"In excess of Loan	Kr.	177,083.20
a 3.42=		$51,778.71
"5% p. a. from 22/9-17-1/9-19=		$5,019.66

"Kristiania Sept. 2nd 1919

"Dampskibsaktieselskapet Østlandet
"Tryggve Sagen.
General Manger,
(Signed) (?)
Book-keeper

"Thorvaldlund
Auditor.

Tryggve Sagen."[4]

[1] U. S. Counter-case, Appendix, page 349.
[2] Norwegian Case, Documentary Evidence, pages 232–237.
[3] Norwegian Case, Documentary Evidence, pages 234–235.
[4] U. S. Counter-case, Appendix, page 291.

Transaction Was a Loan Obtained on Mortgages on Other Ships.

Although the Norwegian Case makes no mention of a mortgage, the record as made up by Captain Hanssen in 1918 shows beyond doubt that the Kr. 8,000,000 obtained from the Klaveness Bank ostensibly on account of the purchase of the "Santiam" was really obtained on a mortgage. The bank in notifying the Ostlandet Company on Sept. 22, 1917 that it had placed Kr. 7,876,123.20 to the order of the Bergens Kreditbank as representative of the Lott Steamship Company, said:

"The acceptances handed in to-day for a total amount of Kr. 8,000,000 due March 21, 1918 have been discounted by us, the net proceeds being placed to your credit as of September 22, according to the accompanying bill as follows:

	7,756,000 crowns plus 2% commission
on 8,000,000------	160,000
	7,596,000

"We take the liberty to look for a mortgage bond for 8,000,000 crowns to be furnished together with insurance policies for the ships." [1]

That the mortgage bond was given by the Ostlandet Company is indicated by the following letter from the Klaveness Bank:

"Klaveness Bank, Inc. Deposit Section,
Kristiania, Sept. 28, 1917.

The Ostlandet Steamship Company,
per Mr. Tryggve Sagen, city.

We take the liberty to inform you hereby that we have recorded the mortgage bond for 8,000,000 crowns issued to our deposit section chief Harald Andersen on the steamships Osterdal, Maridal, and Nitedal, having charged the recording fee of 3,540 crowns against you as of Sept. 27.

Very respectfully,

Klaveness' Bank, Incorp.
(Signature) (?)" [2]

The "*Osterdal*" "*Maridal*" and "*Nitedal*" were ships owned by the Ostlandet Steamship Co.[3] The statement by Tryggve Sagen already quoted showing that all but Kr. 177,083.20 of the purchase price was a bank loan, shows also that originally the claimant claimed only 5% as interest on this amount. Now, however, the Kingdom of Norway is demanding 7% interest on the entire amount of the purchase price.

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[1] U. S. Counter-case, Appendix, page 289.
[2] U. S. Counter-case, Appendix, page 290.
[3] Norwegian Case, Documentary Evidence, page 200.

Purchasers Bought Under Guarantee That Vessel Would be Under American Flag.

Beginning with the assignment of June 12, 1917, all assignments carried the following paragraph:

"It is further to be noted that the seller have guaranteed the contract transferred to American flag, which guarantee is to be accepted by the purchaser."[1]

Resale Premiums Involved.

This case affords almost the only instance in which the Norwegian documents have furnished the Tribunal with statements of the consideration on the mesne assignments, thereby showing the resale profits made by each assignor. According to this showing these resale profits on the transfer of the contract for the "*Santiam*" were as follows:

Willy Gilbert received profits of	$61,600.00
Leif Ehrichsen received profits of	308,000.00
Sverre Hanssen received profits of	660,000.00
Lott Steamship Company received profits of	220,000.00
Christoffer Hannevig A/S received profits of	88,000.00
Total resale profits	1,337,600.00

The claim is made up as follows:

Resale profits	$1,337,600.00
Progress payments	1,053,360.00
	2,390,960.00
Add interest	972,351.07
Grand total claimed	3,363,311.07

According to the record in the Norwegian Case, Willy Gilbert made his profit of $61,600 on a transfer made to Leif Erichsen on October 13, 1916, one day before the date of the contract transferred.[2]

Hannevig's Quick Profits.

The profit of $88,000 shown for Christoffer Hannevig, A/S was all made in one day according to the records. The Hannevig Company bought the contract on September 17, 1917, and sold the same day at an advance of $10 per D. W. T.[3]

[1] Norwegian Case, Documentary Evidence, pages 232–234.
[2] Norwegian Case, Documentary Evidence, pages 226–229.
[3] Norwegian Case, Documentary Evidence, page 234.

Discrepancy in Prices Stated for Transfer of June 12, 1917.

The assignment dated June 12, 1917, from Sverre Hansen D/S to Axel Molvig, representing the Lott Steamship Company says:

"The contract is sold at a price of $250. per ton d. w. of 8800 tons".[1]

At the rate given the total purchase price would have been $2,200,000. This is $91,000 more than the price given by Captain C. Frolich Hanssen in his memorandum of March 12, 1920, wherein he shows that on June 12, 1917, the amount paid for the contract was only $2,109,000.[2]

Explanation of this discrepancy is made all the more difficult because the purchase price stated in the assignment is partly in kroner and partly in dollars, as follows:

"On assignment of this contract the seller shall be paid in cash Kr. 4,452,027 plus $660,000 after the current rate of exchange on the date of payment * * *".

The current rate of exchange is not given, but it must have been unduly low at that time if Kr. 4,452,027, plus $660,000, plus the remaining instalments of $117,040. due the shipbuilder, equalled $250 per ton. This is illustrated below:

Alleged sale price $250. times 8800 equals		$2,200,000.00
Deduct amount to be paid in dollars	$660,000	
Deduct instalment to be paid shipbuilder	117,040	
Total deduction		777,040.00
Amount represented by Kr. 4,452,027. equals		$1,422,960.00

Kr. 4,452,027 divided by $1,422,960. equals 3.14 plus.

Adequate proof of payment in the various transfers is lacking. The evidence of the assignment claimed is better than in some other claims, but, as usual in these Norwegian claims, no cancelled checks have been produced in the Norwegian documents to show actual payment.

Expenditures Alleged in Excess of Claim.

While the claim is declared to be for reimbursement it falls short in amount, if all the expenditures shown were actually outlayed. The

[1] Norwegian Case, Documentary Evidence, page 232.
[2] U. S. Counter-case, Appendix, page 293.

claim as sworn to by Tryggve Sagen under date of September 17, 1919, shows the following expenditures not now included:

Traveling and other expenses	[1] $7,050.12
Commissions	50,669.59

The Norwegian Counter-case lists banking commissions, traveling expenses, organization expenses and operating expenses "incurred in purchasing contracts and not hitherto presented" amounting to Kr. 328,875.57.[2]

Presumably, these expenses are in addition to the Kr. 1,073,095.56 already presented in the statement of the Klaveness Bank, but not included in the claim.

The United States submits that the evidence produced by the Norwegian Agent does not bear upon the question of just compensation for property requisitioned by the Fleet Corporation, but is only an incomplete and unsatisfying history of a speculation in a contract—a speculation entered into after it was certain that the ship called for by the contract could not be delivered to the contract holders.

The United States has endeavored to determine the value of the property requisitioned on August 3, 1917, and submits that the value is represented by $1,184,700. Its willingness to have an award entered by this honorable Tribunal in that amount is hereby reaffirmed.

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[1] U. S. Counter-case, Appendix, page 287.
[2] Norwegian Counter-case, Appendix, page 245.

CLAIM NO. 7.

1. Claimant: Jacob Prebensen, Jr.

2. Account: Hull No. 1010, a 4350 ton steel cargo steamer known as the "Fire Island."

3. Builder: Pusey & Jones Company.

4. Amount Claimed: $209,850.03.

5. Original Contract Dated: June 12, 1917, according to claim.

6. Contract Price: $804,750 or at a rate of $185 per ton according to claim.

7. Contract Delivery Date: November 1, 1918.

8. Percentage of Completion on Aug. 3, 1917: 0.7%.

9. Keel laid: October 5, 1918.

10. Ship Delivered: October 11, 1919.

11. Original Owner: Bulk Oil Transports, Inc.

12. Owner on Aug. 3, 1917: Bulk Oil Transports, Inc.

13. Progress payments by Former Owners: $40,237.50.

14. Amount conceded by the United States as just compensation: $40,820.

15. Assignments As Claimed in Norwegian Case:

Sept. 10, 1917, Bulk Oil Transports, Inc., to Jacob Prebensen, Jr.

Almost Total Absence of Proof on This Claim.

The Norwegian Case has presented a great deal of irrelevant data in connection with this claim but evidence bearing upon the questions really involved is almost entirely lacking in the case as presented. The claim is made up as follows:

Cost of Contract to Jacob Prebensen, Jr.:	
Installments of Contract paid to yard and repaid to vendor	$40,237.50
Premium paid to Vendor	108,750.00
Total	148,987.50
Add interest	60,862.53
Grand total claimed	209,850.03

The great part of this is on account of an assignment which the Norwegian Case claims was made on September 10, 1917 from the Bulk Oil Transports, Inc., to Jacob Prebensen, Jr. The only evidence of this assignment deserves to be printed in full. It follows:

"The Bulk Oil Transports, Inc., a corporation of the State of Delaware, hereby sells, assigns, transfers, and sets over the accompanying contract between itself and The Pusey & Jones Company for the construction of one first class steel cargo steamer for ocean service, known as Yard No. 1010, to be delivered at Wilmington, Delaware, on November 1, 1918, to Jacob Prebensen, Junior, of Risor, Norway, and all its right, title and interest in said contract, in consideration of the sum of One Hundred Dollars and other good and valuable consideration; and the assignee by accepting this assignment covenants to pay all installments hereafter to become payable under said contract.

"In witness whereof the Bulk Oil Transports, Inc., has caused its corporate name to be hereunto signed and its corporate seal affixed, this 10th day of September, 1917.

"BULK OIL TRANSPORTS, INC.,
By RALPH JAMES M. BULLOWA,
President.

"State of New York, }
County of New York } ss:

On this 2nd day of October, 1917, before me personally came Ralph James M. Bullowa, to me known, who, being by me duly sworn, did depose and say, that he resides in New York City; that he is the President of the Bulk Oil Transports, Inc., the corporation described in, and which executed the foregoing instrument; that he knows the corporate seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

GEORGE A. CONROY,
Notary Public Queens Co.,
Ctf. filed in N. Y. Co. #241.

A true copy.

(Sign.) GEORGE A. CONROY,
Notary Public Queens Co.,
Ctf. filed in N. Y. Co. No. 241."[1]

Assignment Allegedly Sept. 10, Notary's Attestation Oct. 2, 1917.

Real significance attaches to the wide interval of time between the date of the assignment and the date of the notary's attestation thereon. The assignment is signed by the same Ralph James Bullowa who wanted to deceive the United States Government by fabricating new contracts, as shown by his letter of July 25, 1917, to H. E. Norbom as follows:

[1] Norwegian Case, Documentary Evidence, page 248.

"New York, July 25, 1917.

H. E. Norbom, Esq.,
Land Title Building,
Philadelphia, Pa.

Dear Mr. Norbom:

The four last contracts were sold to the Bulk Oil and my information is that the cost was $125 per ton. I do not know what information you have given the United States Government about these contracts but of course we would not want to have them taken over at that price. It might be advisable to have the present contracts cancelled and new contracts made as of a month ago at a price of, say, $190 per ton. Would this course of procedure meet your views? *Suppose you telegraph me in the morning in such a way that I only would be able to understand the purport of your wire.* How will this affect our books and the notes heretofore given.

Very truly yours,

Ralph James M. Bullowa."[1]

No doubt to Mr. Bullowa's disappointment, the Secretary & Treasurer of Christoffer Hannevig's Pennsylvania Shipbuilding Company reported that it was too late as the contract prices had already been reported to the Navy Department. However, the Secretary & Treasurer gave Mr. Bullowa assurance that the matter of fabricating spurious contracts had not been overlooked. The reasons why it could not be made effective were explained as follows:

"The next thought in our minds was to make out new contracts with the Bulk Oil Transports, and at such prices as Mr. Hannevig might direct, but this would involve changing the date from August 1st to some later date around March. This, however, could not be done because the Bulk Oil Steamers, as mentioned above, had already been reported as contracted for and we could not undertake to keep the contract date and raise the price from $125. to say $200. per ton, because everybody would know that such prices were not paid on August 1st on such vessels for delivery two years hence."[2]

With such evidence in the record, it is only fair to suggest that there should be something more than a document signed by Mr. Bullowa to prove that the contract for Hull No. 1010 was actually assigned on September 10, 1917.

Certain other assignments signed by Mr. Bullowa bear the notary's attestation as of the same date as the assignment.[3]

If the assignment was actually signed and sealed with the corporate seal of the Bulk Oil Transports, Inc., on September 10, 1917, it is not easy to understand why such a long period intervened before the notary's certificate was secured.

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[1] U. S. Counter-case, Appendix, page 217.
[2] U. S. Counter-case, Appendix, page 218.
[3] Norwegian Case, Documentary Evidence, pages 260–262 and 272.

Only Nominal Consideration Shown in Affidavit.

The Norwegian Case states the price of the contract to Prebensen at $210 per D. W. T.[1]

There is no substantiation of this amount. The assignment states the consideration as "the sum of One Hundred Dollars and other good and valuable consideration." At no place in the Norwegian Case is there any real evidence of a sale of the contract at a price of $210 per ton, although the Norwegian Counter-case, by a happy after-thought, produces a bank statement which shows that money in the amount claimed was paid at the time claimed but wholly fails to show that it was paid by Prebensen or on account of the assignment of hull No. 1010.

The First Statement of Cost.

The tabular statement attached to the Robinson memorandum discussed in connection with Claim No. 3 shows that Jacob W. Prebensen had paid $395,888 for the contract.[2]

Presumably this was the figure furnished by Covington & Burling in their letter of June 23, 1919.

Capt. Hanssen's Statement of Cost.

The brief of Capt. C. Frolich Hanssen under date of November 5, 1919 contains the following:

No. 7 Jacob Prebensen, Jr.:	
Original Cost	$365,400.00
Additions for expenses, interest, commissions, etc	60,463.66
Total amount required to completely reimburse present claimant	425,863.66
Less deductions as above explained	[3] 252,222.84
	173,640.82

Why Prebensen Paid Too Much.

The deduction of $252,222.84 was explained by Capt. Hanssen as follows:

"In the case of the five Wilmington vessels the expenditures of the claimants in part were overpayments, for which, with proportionate

[1] Norwegian Case, page 169.
[2] U. S. Counter-case, Appendix, page 244.
[3] U. S. Counter-case, Appendix, page 251.

interest, etc., they will look to their vendors and not to the United States. At the time of the purchase of the ships by the present holders respectively from the former owner, Bulk Oil Transports, Inc., the parties to the transaction were in Norway and the original contract was in America and not available for inspection. It was supposed that the original contract prices were $140 per ton, and the transaction was closed on that basis. It subsequently developed that the prices were more than that, from $175 to $185 per ton. This resulted in an overpayment of from $35 to $45 per ton. It was also supposed that the original contract called for a first installment of 10 per cent on the supposed original contract price, and that this original installment had actually been paid to the yard. However, it subsequently appeared that the contract actually called for an original installment of only 5 per cent of the actual contract price, which installment of 5 per cent had actually been paid to the builder by the original owner. The result of this was that the present claimants made overpayments to their vendors. These overpayments, together with a proportionate amount of commissions and interest, are deducted from the amount for which reimbursement is requested from the United States.[1]

Norwegian Case Explanation of Overpayment to Hannevig.

The Norwegian Case makes practically the same explanation of the overpayment to Hannevig's Company. The Case says:

"On September 10, 1917, the contract was assigned by the Bulk Oil Transports, Incorporated, to J. W. Prebensen, Jr. for a consideration of $365,400. Of this amount $216,412.50 was an overpayment for which Mr. Prebensen will look to his vendor and not to the United States. At the time of the purchase of the contract by Mr. Prebensen from the Bulk Oil Transports, Inc., he and the agent of the vendor were in Norway while the original contract was in the United States and not available for inspection. It was supposed that the original contract price was $140 per ton and the transaction was closed on that basis. It subsequently developed that the price was in fact $185 per ton. This resulted in an overpayment of $45 per ton, or $195,750. It was also supposed that the original contract called for a first installment payment of 10% on the supposed original contract price of $609,000 and that this original installment had actually been paid to the yard. On this assumption Mr. Prebensen paid to the vendor $60,900 as reimbursement for this supposed first installment. However, it subsequently appeared that the contract actually called for a first installment of only 5% of the actual contract price of $804,750 which installment of 5% amounting to $40,237.50, had actually been paid to the builder by the original owner. Accordingly Mr. Prebensen made another overpayment to his vendor of $20,662.50. The total over-payment, $216,412.50 is deducted from the cost of the contract to Mr. Prebensen."[2]

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[1] U. S. Counter-case, Appendix, pages 250–251.
[2] Norwegian Case, pages 215–216.

Hannevig's Name Not Mentioned.

The name of Christoffer Hannevig is not mentioned in either of the two foregoing statements. The Norwegian Case says:

"At the time of the purchase of the contract by Mr. Prebensen from the Bulk Oil Transports, Inc., he *and the agent of the vendor* were in Norway while the original contract was in the United States and not available for inspection."

The identity of "*the agent of the vendor*" is not disclosed. So far as the record discloses the only person in Norway at that time with authority to assume to commit the Bulk Oil Transports Inc., was Christoffer Hannevig, who owned and controlled the company. Assuming for the moment that the transfer of the contract actually occurred on Sept. 10, 1917, it is apparent from documents in the Norwegian Case that Hannevig was in Norway on that date. The documentary evidence produced by the Kingdom of Norway carries two documents, one signed by Christoffer Hannevig under a Christiania date of Sept. 8, 1917, and the other signed by Christoffer Hannevig under a Christiania date of Sept. 12, 1917.[1]

The pertinent question here is: If Hannevig was the agent of the vendor referred to, why is his identity so carefully withheld?

The assumption that the agent was Christoffer Hannevig is not merely jumping at a conclusion, for Mr. Hannevig appears in the Norwegian record as being in Norway on Sept. 8, and selling one of the Pusey & Jones ships to Tryggve Sagen. The vendor's agent may of course have been Christoffer Hannevig A/S instead of Christoffer Hannevig. The Norwegian Case shows that Christoffer Hannevig A/S sold one of the Bulk Oil contracts on Sept. 5, 1917.[2]

Just a Simple Little Mistake of $216,412.50.

As described by Capt. Hanssen in his brief and in the Norwegian Case, the overpayment of $216,412.50 is made to look like a simple, inconsequential error.

The agent, Hannevig or whoever it was, supposed the contracts were at the rate of only $140 per ton, but "it subsequently developed that the price was in fact $185 per ton." This indicates either a speculative selling and buying that disregarded ordinary business

[1] Norwegian Case, Documentary Evidence, pages 172 and 174.
[2] Norwegian Case, Documentary Evidence, page 261.

precaution, or that possibly the subsequent development was an error and the price was really $140 per ton as the agent supposed, but was raised to $185 per ton.

The Bullowa letter already quoted and the response thereto give evidence of a perfect readiness on the part of two of Hannevig's lieutenants to juggle contract dates and prices in order to deceive the United States Government and get larger sums on requisition. If the President and Secretary of the Bulk Oil Company was willing to fabricate new contracts at higher prices to take the place of four of his company's contracts with one of the Hannevig Shipbuilding Companies, it is not a far-fetched assumption that he would be equally willing to do the same thing with the five contracts of his company with another of the Hannevig Shipbuilding Companies.

As already explained in the letter from the Secretary & Treasurer of the Pennsylvania Shipbuilding Company, partly quoted above, the contracts then in question could not be doctored because the facts concerning them had been reported to the Navy Department.

Not Too Late to Manipulate Wilmington Contracts.

However, it was not too late at that time, July 27, 1917, to falsify the last five Wilmington contracts. They had not been included in the report to the Navy Department. They had been included by mere reference in a letter of June 29, 1917, from the Pusey & Jones Company to the Emergency Fleet Corporation in response to a letter of June 15, 1917, in which the Fleet Corporation asked for all pertinent data on vessels under contract, *and asked specifically for contract prices.*[1]

Hannevig's Company Had Withheld Information.

Instead of giving the information requested the Pusey & Jones Company gave this bare information concerning the last five contracts.

"We are building for account of the Cunard Line eight steamers, each 310 ft. long, with capacity of about 4500 tons each. These are known as our Nos. 1, 2, 3, 4, 5, 6, 7 and 8. *Nos. 9, 10, 11, 12, 13 and 14 are for account of Bulk Oil Transports, (Inc) New York City, and are for steamers duplicates of those building for the Cunard Line.*"[2]

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[1] U. S. Case, Appendix, pages 209–210.
[2] U. S. Case, Appendix, pages 210–211. Italics ours.

The numbers of the 14 ships were later changed to read consecutively from 1001 up to 1014 so that No. 10 in the letter of June 29, 1917, referred to Hull 1010 now involved in claim No. 7.

There was not a word about contract price, or other pertinent details requested by the Fleet Corporation, with the exception that probable delivery dates were given.

It was not until August 16, 1917, after a visit and personal request from the Fleet Corporation's District Officer, that the Fleet Corporation was able to obtain data sheets from the Pusey & Jones Company.[1]

Data Sheets Blank on Contract Price.

Even then the data sheet covering Hull 1010 gave no contract price. It carried the blank form for facts about the contracts, specifications, contract delivery date, date of last payment and amount still due, but these were left significantly blank.[2]

Accordingly it appears that in the case of Hull 1010 and four other Wilmington hulls, Mr. Bullowa was not embarrassed by governmental possession of information which might make it unsafe to do the very thing he had suggested doing in the case of the contracts with the Pennsylvania Shipbuilding Company.

Same Mistake on All Five Contracts Aggregated About $1,000,000.00.

Therefore, it is not surprising that the same mistake was made by the "agent of the vendor" on all five contracts between the Pusey & Jones Company and the Bulk Oil Transports, Inc.

This mistake amounted to $999,412.50 in the five Bulk Oil Transports contracts involved in the Norwegian claims. Such a mistake falling just a few dollars short of $1,000,000, is not a natural, simple occurrence as one might be led to believe from a reading of the Norwegian Case.

It is hardly to be expected that Christoffer Hannevig, then in Norway and presumably active as the agent for the Bulk Oil Transports Inc., which he owned, would have made an error in such an enormous amount and it is difficult to believe that even Mr. Hannevig hard pressed for cash as he was would have dared intention-

[1] C. B. Lynch to Geo. R. McDermott, August 16, 1917. U. S. Case, Appendix, page 220.
[2] See data sheet, U. S. Counter-case, Appendix, page 23.

ally to misrepresent the contract price, when detection within a very short time was so certain, particularly in view of the fact that in certain cases provision appears to have been made for inspection of the documents before the consideration was paid. Yet in some way, the million dollar "mistake" occurred. In the light of the available facts it may fairly be suggested that in these cases Mr. Bullowa had new contracts made with the prices raised from $140.00 per deadweight ton to $175.00 to $185.00 per deadweight ton, and that the news of this change had not reached the "agent of the vendor" before the contract was assigned at the original rate. Such a suggestion cannot be unfair to Mr. Bullowa, for his own letter already quoted shows that this is exactly what he proposed doing in connection with other contracts.

Mr. Prebensen's Story of the Purchase.

Jacob Prebensen, Jr., the claimant, has a signed statement printed in the Norwegian Case. In this statement he says:

"It was my intention to form a company to take over the new vessel. The report from Washington to the effect that the U. S. Shipping Board had decided on the 4th of October to requisition the Norwegian vessels for title, a report which reached us on the 10th of October, 1917, *made it impossible, however to form a company, and I therefore had to keep the contract myself and the claim against the American Government for damages.*"[1]

This statement of Mr. Prebensen's actions stands out in sharp contrast with the actions of certain other contract holders who were not deterred in any way from going ahead with the organization of companies for the sale of stock to the public. Mr. Prebensen endeavors to create an atmosphere to explain the purchase. He tells of the loss by war of the "*Credo*" and the "*Seirstad*," and submits maritime declarations concerning the lost vessels.

Examination of the maritime declarations shows that the "*Credo*" was sunk by a German submarine on Aug. 10, 1916, just thirteen months before the claimed assignment of Hull No. 1010. Also, they show that the "*Seirstad*" was sunk by a German submarine on Nov. 11, 1916, almost a year before Hull 1010 was allegedly transferred. Accordingly, it would appear that these documents have very little bearing on the claim.[2]

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[1] Norwegian Case, page 219. Italics ours.
[2] Norwegian Case, Documentary Evidence, pages 239–242.

The same thing may be said of the contract for the "*S. S. Tento*" which is printed in the documentary evidence.[3]

The Norwegian Case gives page after page of such irrelevant matter, but not a line of evidence showing that Jacob Prebensen Jr., paid any sum whatsoever for the assignment of the contract.

It is true that Mr. Prebensen in his unsworn statement says that he got his bankers to lay out the cash instalment on the purchase sum $365,400, but there is no cancelled check or other evidence showing any payment by Prebensen.

However the Norwegian Counter-case does offer competent evidence that $365,400 was paid to Christoffer Hannevig, Inc. in New York. This evidence is in the form of a contemporaneous document and as such evidence is so rare and exceptional it is printed here in full as follows:

"Advice of Debit
The National City Bank of New York.
Foreign Department.
In replying please quote initials FT.

New York 9/13/17

S. S._____
Agdesidens Bank,
Arendal, Norway.

Dear Sirs:

In accordance with the instructions contained in your cable of 9/10 which have had our attention, we have placed the following amounts to your debit in account:

Payment to:
Christopher Hannevig, Inc., New York 365400.00
Value 9/12 Three Hundred Sixty-five Thousand Four Hundred Dollars.

Yours respectfully, (Signed) John E. Gardin,
Vice President." [1]

The foregoing is very acceptable as far as it goes, but it does not show that this payment was from Prebensen or on account of the assignment of Hull 1010.

The United States affirms its willingness to pay just compensation for the property it requisitioned on August 3, 1917. It submits that the amount of compensation should not exceed a maximum of $40,280, which sum it stands ready to pay.

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[3] Norwegian Case, Documentary Evidence, pages 242–244.
[1] Norwegian Counter-case, Appendix, page 241.

CLAIM NO. 8.

1. Claimant: Tromp Steamship Company, C. K. Christophersen, Manager.

2. Account: Hull No. 1011, a 4350 ton d. w. steamer known as the "Long Island."

3. Builder: Pusey & Jones Company.

4. Amount Claimed: $361,745.30.

5. Original Contract Dated: June 12, 1917, according to claim.

6. Contract Price: $804,750, or at a rate of $185 per ton according to claim.

7. Contract Delivery Date: December 1, 1918.

8. Percentage of Completion on August 3, 1917: 0.7%.

9. Keel Laid: January 1, 1919.

10. Ship Delivered: February 28, 1920.

11. Original Owner: Bulk Oil Transports, Inc.

12. Owner on August 3, 1917: Bulk Oil Transports, Inc.

13. Progress Payments by former owners: $40,237.50.

14. Amount conceded by the United States as just compensation: $40,820.

15. Assignment as claimed in Norwegian Case:

Sept. 29, 1917, from Bulk Oil Transports, Inc., to the Tromp Steamship Company.

Make Up of Claim.

The Claim is made up as follows:

Cost of contract to Tromp Steamship Company:	
Installment of Contract Price Paid to yard and repaid to vendor	$40,237.50
Premium paid to vendor	217,500.00
Total	257,737.50
Add interest	104,007.80
Grand total claimed	361,745.30

The foregoing does not include $216,412.50, allegedly paid to the vendor as an excess payment due to an error regarding the contract price.

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Bulk of Claim on Account of Another Bullowa Assignment.

With the exception of the $40,237.50 with interest thereon the claim is entirely on account of resale premiums allegedly paid on an assignment of the contract by the Bulk Oil Transports, Inc., to the Tromp Steamship Company.

This assignment is signed by Ralph James Bullowa for the Bulk Oil Transports, Inc. It is more definite than the assignment signed by Bullowa in the case of Claim No. 7. In that case a nominal consideration is shown in the assignment, but in the case of Hull No. 1011, now under discussion, the assignment showed a consideration of $474,150. Although this assignment was allegedly of September 29, 1917, it was not sworn to by Mr. Bullowa or attested by the Notary until October 2, 1917.[1]

Purported Evidence of Payment.

In the documentary evidence submitted by the Kingdom of Norway there is a brief statement which purports to be evidence that the $474,150 named in the assignment was actually paid. This was in the form of a statement of August 28, 1919, from Drammens Privatbank and reads as follows:

"Bank Statement
Drammens Privatbank

According to the request of Mr. C. K. Christophersen, Drammen, we herewith beg to state that we have debited the account of the A/S Tromp, Drammen, on the 25th September, 1917 for transfer to Den norske Handelsbank for account of Christopher Hannevig A/S.

$474,150, Kr. 1,540,987.50

Drammens Privatbank

Drammen, August 28th, 1919

(Sign.) Andreas (Illegible)"[1]

The statement from the Drammens Privatbank is not a contemporaneous document, but one that obviously was obtained for the purpose of supporting the claim. It is characteristic of the kind of evidence offered in support of the claims for the Pusey & Jones ships. As the Norwegian Case itself is not able to supply the name of the person signing for Drammens Privatbank, it is compelled to print the word, "illegible."

[1] Norwegian Case, Documentary Evidence, page 254.

No Other Evidence of Any Kind Except Unsworn Statement by Manager Christophersen.

The only other attempt to support the claim that this contract was actually assigned and paid for by the Tromp Steamship Company is an unsworn statement by C. K. Christophersen, Manager of the claimant Company. Mr. Christophersen says:

"*On September 5th, 1917*, the company bought an American contract for building of a steel steamer about 4400 tons d. w., the contract being No. 1011 at the Pusey and Jones Co, Wilmington, Del., U. S. A. The ship to be delivered December 1st, 1918. *The first installment was paid September 25th when there was remitted through Den Norske Handelsbank to National City Bank of New York $474,150.*"[1]

Bought Sept. 5th says Christophersen; Sold Sept. 29th says Bullowa.

The evidence offered by Mr. Christophersen fails to agree with the assignment signed by Bullowa. According to the Bullowa assignment the transfer was as of Sept. 29, 1917. Christophersen says that the Company bought the contract on Sept. 5, 1917, and that the first installment of $474,150, was actually paid on Sept. 25, 1917, which was four days before the date of the alleged assignment. The Norwegian Case gives the date of assignment as Sept. 29, 1917.[2]

Mr. Christophersen is further quoted as follows:

"Before buying this boat the Directors of the Company went thoroughly into the matter and weighed every pro and con before settling the business. The owners wished to get hold of a good modern steamer as early as possible and this was about the best they could do under the circumstances. The price $235.00 pr. ton compared favorably with prices on this side, and then new tonnage was not obtainable in Europe for delivery for several years. None of the Directors had the slightest personal interest in the bargain, the transaction was absolutely net, no commission was paid."[3]

The statement that "no commission was paid" unless limited to mean no commission was paid to directors does not agree with the brief as presented by Capt. Hanssen on November 5, 1919. In that brief Capt. Hanssen included the following statement:

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[1] Norwegian Case, page 223. Italics ours.
[2] Norwegian Case, page 170.
[3] Norwegian Case, pages 223–224.

"No. 8 A. S. Tromp:

Original cost	$474,150.00	
Additions for expenses, interest, commissions, etc	56,444.00	
Total amount required to completely reimburse present claimant	530,594.00	
Less deductions as above explained	241,261.94	
		289,332.06."[3]

From the foregoing it would appear that the expenses, interest and *commissions* amounted to $56,444.00.

The Norwegian Counter-case also claims that commissions were paid. In the Appendix of this case is a statement of expenses of claimant incurred in purchasing the contract. It shows the following:

"CLAIM NO. 8.

Bank Commissions, Sept. 25, 1917	Kr. 20,770.50
Traveling Expenses	Kr. 655.65
Operating Expenses	Kr. 45,206.37
Total	Kr. 66,632.52"[4]

Presumably these expenses are not intended to be added to the claim; at least, that is indicated by conclusion 8 in the Norwegian Counter Case.

The "Overpayment" of $216,412.50.

Mr. Christophersen's unsworn statement is silent concerning any overpayment to the vendor. The explanation of the alleged overpayment as made in the Norwegian Case is printed immediately ahead of the Christophersen statement. The explanation was the same as that already quoted in connection with Claim No. 7. It appears that the parties to the transaction supposed that the original contract price was $140 per ton and the transaction was closed on that basis, but it subsequently developed that the price was $185 per ton. This resulted in an overpayment of $45 per ton, or $195,705.

Also the same mistake was made as in the case of Claim No. 7, in regard to the installment terms. On the assumption that the original contract price was $609,000, and that the Bulk Oil Transports, Inc. had already paid 10% of that amount to the shipyard, the purchaser allegedly paid to the vendor $60,900 as reimbursement for this supposed first installment. However, according to the Norwegian Case, it subsequently appeared that the contract actually called for a first installment of only 5% of the actual contract price of $804,750.

[3] U. S. Counter-case, Appendix, page 251.
[4] Norwegian Counter-case, Appendix, page 245.

Accordingly it is claimed that the present owner made another overpayment to the vendor of $20,662.50. The Norwegian Case states that the purchaser will look to the vendor and not to the United States to make good this overpayment.

Agent of the Vendor Not Named.

The Norwegian Case states that at the time of the purchase the purchaser and the agent of the vendor were in Norway, while the original contract was in the United States and not available for inspection.[1]

There is no mention of the identity of the agent of the vendor but there is the same reason as in the case of Claim No. 7 for believing that this agent was either Christoffer Hannevig himself or Christoffer Hannevig, A/S. In fact the statement from Drammens Privatbank states that the $474,150 was transferred to Den Norske Handelsbank for account of Christoffer Hannevig, A/S.[2]

Tromp Company Thought it was Taking No Chances In Buying the Contract.

Manager Christophersen is quoted in the Norwegian Case as follows:

"In October, 1917, about a month's time after the company had bought the Pusey and Jones No. 1011 we were very much astonished to learn that the American Government had decided to acquire these ships as their own absolute possession. It will be seen above that the company bought this contract solely with the intention of continuing its shipping business. The company had, as a matter of course, no interest in placing its good cash money in a boat which U. S. A. would seize as their own property, and *if we had anticipated such a position, we would of course never have bought this contract, as the ship would be of no use to us as American property. It was the ship we wanted, so as to enable the company to carry on its trade.*[3]

Contrary to the statement quoted above it is quite evident that Mr. Christophersen and his associates did anticipate difficulty in obtaining delivery of the ship and took measures to guarantee themselves against loss. This is shown by the following extract from the report of the Company for 1919:

"While referring to circulars of October, 1919, we will state that it has now been finally decided that the new ship under construction in the United States on the account of the company will not be

[1] Norwegian Case, page 222.
[2] Norwegian Case, Documentary Evidence, page 255.
[3] Norwegian Case, page 224. Italics ours.

delivered to the company for the reason that it has been requisitioned by the American authorities.

"As mentioned in previous circulars, we had insured ourselves repayment of the amount deposited under the contract in case the ship should not be delivered by September 30, 1919.

"Both Hannevig and the guarantor, the Norwegian Commercial Bank, however, refused at that time to restore the amount, maintaining that we must first secure a settlement from the American authorities.

"A suit was therefore instituted against the Commercial Bank and Hannevig, we demanding a prompt repayment of the amount paid in.

"The suit has been going on until the last few days, when Hannevig has been offering to repay the sum paid in. namely, 1,540,987.56 crowns, plus 4% interest per annum, together with 20,000.00 crowns to cover our expenses.

"After several negotiations to and fro the Board of Directors with the consent of the committee of representatives and the attorney of the company accepted Hannevig's offer.

"In consequence of Hannevig's offer the whole amount will be paid back by March 31st of this year. When this sum has been received, the company will have an available capital of about 2,450,000.00 crowns.

"As soon as the settlement has been made, a general meeting of stockholders will be called to adopt measures for the employment of the capital.

"March 12, 1920."[1]

The Haandbok over Norske Obligationer og Aktier for 1918 shows an extract from the operating account of the Tromp Steamship Company containing the following:

"In case the vessel is not delivered by September, 1919, the constructors must pay back the amount paid in, plus 4% interest. For the due performance of this obligation, we have a bank guarantee from one of the largest Norwegian banks."[2]

The Haandbok over Norske Obligationer og Aktier for 1919 carries he following statement from Tromp Steamship Company's annual report:

"As mentioned in annual report for 1917, the Tromp Company has a bank guaranty from one of the largest Norwegian banks for repayment of the amount paid in plus interest if the ship is not delivered by September 30, 1919. *That is to say, the shipping company has a right to annul the contract unless the ship is delivered within this time.*"[2]

The same extract tells of negotiations with Mr. Christoffer Hannevig as owner of the works and tells also that a group had been formed of all the owners of the various Hannevig contracts.

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[1] U. S. Counter-case, Appendix, pages 354–355.
[2] U. S. Counter-case, Appendix, page 354.

The outcome of the law suit against the Commercial Bank and Hannevig was still uncertain when the Haandbok over Norske Obligationer og Aktier for 1921 was printed. The Haandbok for that year contains the following from the Tromp Steamship Co:

"The lawsuit against the Norwegian Commercial Bank is now pending and it is expected that a decision will be rendered by the Christiania City Court in the course of the spring. Our contention is for full repayment of the $474,150 paid in plus 4% per annum, in accordance with the guarantee of the commercial bank of September 25, 1917."[1]

Ironclad Indemnity Against Loss by Requisitioning.

Mr. Christophersen's statement that his Company never would have bought the contract if it had anticipated requisitioning is all the more astonishing when an examination of the papers in the law suit reveals the ironclad character of the guarantee which the Tromp Steamship Company demanded before it entered into the arrangement with Hannevig. The papers in this suit not only reveal the fact that Christoffer Hannevig and Christoffer Hannevig A/S were the agents of the vendor, but that the Tromp Steamship Company did have clearly in mind the requisitioning by the American Government.

Also it would appear that the Tromp Steamship Company had very definitely in mind a prospective indemnity from the American Government; in other words, the purchaser knew he was buying a claim.

It is well to begin with a letter of Sept. 5, 1917, which Christoffer Hannevig, Inc., wrote to C. K. Christophersen representing the Tromp Steamship Company as follows:

"We have today received the following positive offer from you, subject to answer at Drammen tomorrow at twelve o'clock noon: Mr. Hannevig, or that one of his companies which holds (contract) No. 11 with the Pusey & Jones Company, Wilmington, Del. for a 4350 tonner, delivery 1918, transfers to you all his rights and obligations under this contract at a price of $235. per ton, making a total of $1,022,250. Of this amount there is to be paid in cash, as soon as your representative at New York has approved the documents, the sum of $474,150, the remainder being payable in nine installments of $60,900 each. You furthermore reserve the following rights:

"If the ship is not delivered within two years after the transfer of the contract the purchaser is to be repaid the amount paid in together with accrued interest at 4%.

[1] U. S. Counter-case, Appendix, page 355.

"*In case the ship is requisitioned by the American Government and the indemnity does not cover the amount paid in by Tromp, Inc., Mr. Hannevig guarantees to make up the difference.*"[1]

That Christoffer Hannevig was the agent whose identity is so carefully withheld in the Norwegian Case is shown by a telegram quoted in the judgment rendered by the Christiania Town Court on October 19, 1921, in the lawsuit against the Norwegian Commercial Bank. That telegram reads as follows:

"Confirm sale 4350 tonner in accordance with your positive offer today."[1]

This telegram was signed by Christoffer Hannevig.

It is to be inferred from the record that the Tromp Steamship Company did not want to rely upon Hannevig alone, but demanded a guarantee from some responsible bank that it would get its money back or that it would receive the difference between what it had paid and any indemnity received from the American Government. The judgment of the Christiania Town Court quotes the following letter which was written by the Norwegian Commercial Bank, Inc. to Tromp, Inc., on Sept. 25, 1917:

"Christoffer Hannevig. In connection with the purchase by you of a 4350 tonner, contract #11, to be constructed by the Pusey & Jones Co., Wilmington, Del., for delivery in 1918, we guarantee;

"On account of Christoffer Hannevig, Inc. of this place:

"1. That unless the vessel is delivered within two years from the transfer of the contract, the purchaser shall have a right to demand repayment of the amount paid in, together with accrued interest at 4% per annum, and

"2. That in case the vessel is requisitioned by the American Government and the indemnity does not cover the amount paid in by you, the difference will be made up by Mr. Hannevig, together with interest as above.

"This guarantee shall remain in force until October 1, 1919."[1]

Claim Against America Principal Consideration.

The expected indemnity from America was not received in the two years time limit under guarantee No. 1 of the Commercial Bank. On June 24, 1919, Mr. Christophersen wrote both the Commercial Bank and Christoffer Hannevig informing them that he expected to be paid back in full with interest on Sept. 28, 1919.

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[1] U. S. Counter-case, Appendix, page 392.

The reply of the Commercial Bank gives an indication of the real purpose behind this whole transaction. This letter of June 26, 1919, to the Tromp Company calls attention to the fact

"*That our guaranty is not effective for a larger amount than that which remains after the American authorities have paid the requisition money. If this money should be less than the amount paid in by you, and if Christoffer Hannevig, Inc. is unable to make up the difference (which seems to us unthinkable), then our guaranty will become effective.*"[1]

The Tromp Company waited until Sept. 25, 1919, and then instituted suit.

The Court's Decision.

The Christiania Town Court in its decision very clearly differentiated between the two guarantees, No. 1 and No. 2, already quoted. It took the position that guarantee No. 1 ceased to have any significance because of the requisition. The court held that guarantee No. 1 was limited to two years and applied to the inability of the shipyard to make delivery within that time. The court held also that guarantee No. 2 applied to events in which the vessels would be requisitioned by the American Government which is exactly what had occurred in this case, and that under this guarantee there was no time limit. The court said,

"There is no indication that payment of the guaranty by the bank under point 2 shall become due before the American government has made settlement, nor can this be assumed as having been the intention of the bank, for in this case it would have been necessary to take additional measures in regard to recourse, etc., as mentioned above. In view of the Amercan rules regarding the transfer of such indemnity claims, the bank might have gotten into a difficult situation in case it had paid the whole amount of the contract before the indemnity had been fixed and paid."[2]

The court temporarily acquitted the Norwegian Commercial Bank so that the claimant must wait until final settlement with the United States Government before collecting from the bank any difference between the amount paid to Hannevig and the amount received as just compensation.

Assignment Was For Purpose of Making Claim Against America.

The record in the lawsuit illuminates the real purpose of the transaction by which Hannevig assigned the contract for Hull No.

[1] U. S. Counter-case, Appendix, page 393.
[2] U. S. Counter-case, Appendix, page 396.

1011 to the Tromp Steamship Co. Inc. Mr. Christophersen may say "We were very much astonished to learn that the American Government had decided to acquire these ships," but the precautions which he and his associates took are sufficient evidence that they had little ground for astonishment. Ostensibly they purchased a contract for a ship to be delivered on December 1, 1918, and Mr. Christophersen says it was a ship they wanted to enable the Company to carry on its trade, but the court record reveals that they were not so much interested in obtaining a ship on December 1, 1918, as in the indemnity which probably would be obtained from the American Government. In fact their agreement with Hannevig shows that they were in no particular hurry for the ship itself for they gave a period of two years for delivery after the transfer of the contract.

According to the court the claimant should have been more careful in exacting his guarantee. The court said:

"If the plaintiff had reflected sufficiently when he drew up the guaranty he would have embodied in point 2 a provision to the effect that the amount paid in should be paid back in case of requisition provided indemnity were not paid within two years."[1]

It is clear from the record that the plaintiff thought that a two-year guaranty covered the payment of any difference between the just compensation received and the amount paid. This was the only weakness in the otherwise ironclad indemnity.

The United States respectfully submits to this Tribunal that it should not be asked to pay the losses of speculators in their dealing with Hannevig, particularly when such losses are incurred under written agreements which show conclusively that the claimants knew exactly the kind of chance they were buying. It must have been known to the parties that Hannevig was transferring a contract for a ship which he knew had already been requisitioned. The obvious result, if not the underlying purpose, was to swell the amount of the claim against the American Government and possibly at the same time to secure ready cash for the Hannevig enterprises. The United States contends that the maximum value of the property which it requisitioned on August 3, 1917, in connection with hull No. 1011 is $40,820, which amount it stands ready to pay.

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[1] U. S. Counter-case, Appendix, page 395.

CLAIM NO. 9.

1. Claimant: The Maritim Corporation, Karluf Hanssen Manager.

2. Account: Hull No. 1012, a 4350 ton d. w. steamer known as "Staten Island."

3. Builder: The Pusey & Jones Company.

4. Amount Claimed: $392,492.40.

5. Original Contract Dated: June 12, 1917, according to claim.

6. Contract Price: $783,000 or at the rate of $180 per ton according to claim.

7. Contract Delivery Date: January 1, 1919.

8. Percentage of Completion on August 3, 1917: 0.7%.

9. Keel Laid: February 17, 1919.

10. Ship Delivered, April 3, 1920.

11. Original Owner: Bulk Oil Transports, Inc.

12. Owner on August 3, 1917: Bulk Oil Transports, Inc.

13. Progress Payments by former owners: $39,150.

14. Amount conceded by the United States as just compensation: $39,720.

15. Assignments As Claimed in the Norwegian Case:

Aug. 30, 1917 from Bulk Oil Transports, Inc. to the Martim Corporation.

Make-Up of Claim.

The Claim is made up as follows: Cost of contract to the Maritim Corporation:

Installment of contract price paid to yard and repaid to vendor	$39,150
Premium paid to vendor	239,250.00
Total	278,400.00
Add interest	114,092.40
Grand total claimed	392,492.40

String Tied to Purchase Money.

Indemnity from America was in the minds of the parties to the assignment under which the Maritim Corporation became the claimant on account of this Hannevig contract.

Hans Karluf Hanssen, representing the claimant company, professes great surprise over the requisition. In discussing this phase of the matter in the Norwegian Case, Mr. Hanssen says:

"In order to be on the safe side, the undersigned, Mr. H. Karluf Hanssen conferred with the Shipowners for the purpose of ascertaining, before our contract was placed with Pusey & Jones Co., if there would be any cause to believe that the requisition would be for permanent possession, but we received from them a consoling answer. *It came therefore as a great surprise when Mr. Meling in the early part of October 1917 reported home that the United States Shipping Board had then decided to requisition the Norwegian owned contracts for ownership.*"[1]

The degree of Mr. Hanssen's surprise may be inferred from the following bank guarantee which he obtained from Christoffer Hannevig before purchasing the contract:

"(1) If the boat is not delivered within two years from the transfer of this contract, the buyers shall have the right to demand the paid up installments and moneys, carrying an interest of 4% per year.

"(2) *If the boat shall be requisitioned by the American Government and the compensation does not cover the paid up installments and money paid by the buyer, the difference shall be covered by Mr. Hannevig, carrying an interest as above.*"[2]

At the time of the assignment of the contract, perhaps the most prominent fact before the public of Norway was that the American Government had already requisitioned ships. Mr. Hanssen says:

"We of course knew that America had entered the war and was planning a requisition. * * * We could, of course, not believe that America would make use of her war demands for the purpose of procuring for herself a merchant marine. We were further strengthened in this, our opinion, both through the reports received from Shipowner Meling, who was a member of the so-called Nansen Commission, as well as through the reports circulated by the Norwegian Shipowners."[3]

The Christiania Court in the case of B. Stolt-Nielsen vs. Bjorn Bjornstad & Co., has already given its judgment of what shipowners in Norway should have believed after August 17, 1917. The Court referred to a telegram from Mr. Meling published in the Navigation Journal on August 17, 1917, and then said:

"As the plaintiff admitted this (cf. his statement in this regard on page 7 of his argument), *I cannot see but that he must have been fully aware on September 20, 1917, that the requisition of August 3,*

[1] Norwegian Case, page 229. Italics ours.
[2] Norwegian Case, Documentary Evidence, page 261. Italics ours.
[3] Norwegian Case, page 228.

1917, was a requisition or seizure for possession (ownership) or would be upheld as such. The Norwegian representatives in America worked to have the requisition not be for possession, but according to the telegram in the Navigation Journal of August 17, 1917, the prospects for this do not seem to have been very bright." [1]

The Court later added that the plaintiff bought the contract in spite of this and "in so doing, he assumed the risks and chances." The court said further:

"In taking these various chances the plaintiff made a speculation and assumed the risk." [2]

The Incentive Brought Out by the Court.

The incentive for such speculative ventures was noted in the judgment of the Court, which quoted the defendant as follows:

"The hope was entertained at that time that an indemnity for the expropriation might be obtained from America to an amount as high as 1,100 crowns per ton for a contract with so favorable a delivery date as the new-ship contract in question. It was therefore a risky, but not an unreasonable business." [2]

"Contract With the Shipyard Had Ceased to Exist."

The Court made another comment that has a very pertinent bearing on the claim of the Maritim Corporation, as well as the other claims. The Court said:

"Inasmuch as America, which had entered the war, seized completed ships and ships under construction the plaintiff must have likewise been aware that the contract with the shipyard had ceased to exist, especially as the Emergency Fleet Corporation had paid the seventh installment to the shipyard. Even if it was unclear as to whether the contract itself had been expropriated, nevertheless the plaintiff must at all events have been prepared to find that such was the case and that, in lieu thereof, he would obtain only a claim to indemnity." [3]

The purchasers of the contract for Hull No. 1012 undoubtedly were fully prepared to find that they "would obtain only a claim to indemnity." That is proved by the careful arrangement for a bank guarantee from Christoffer Hannevig to insure themselves from loss in case the indemnity should not measure up to their hopes or expectations.

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[1] U. S. Counter-case, Appendix, page 387. Italics ours.
[2] U. S. Counter-case, Appendix, page 387.
[3] U. S. Counter-case, Appendix, page 388.

They did not take the chances and the risks described by the Court. Theirs was a guaranteed speculation.

7% Interest if America Pays; Only 4% if Hannevig Has to Pay.

The guarantee exacted from Hannevig provided for only 4% interest, just a little more than half the 7% demanded of America in the Norwegian claims. The question of interest also received the attention of the Christiania Court in the case already referred to. The Court, after commenting upon the charge of 6½% and 7½% said:

"The plaintiff failed to show that he had a right to more than the usual rate of interest."[1]

Bullowa Assignment Dated Six Days Prior to Sale Agreement.

The assignment signed by Ralph James Bullowa, for the Bulk Oil Transports, Inc., was dated August 30, 1917. It names only a nominal consideration.

The sale agreement signed by Christoffer Hannevig A/S, is dated September 5, 1917, and the wording of the agreement makes it plain that the sale was on September 5, six days after the date of the Bullowa assignment. The agreement begins as follows:

"We acknowledge today to have sold to you * * *"[2]

The Usual "Mistake" Concerning Contract Price.

There was the usual mistake over contract price. The Norwegian Case makes the same explanation made in connection with Claims 7 and 8.

"It was supposed that the original contract price was $140 per ton and the transaction was closed on that basis. It subsequently developed that the price was in fact $180 per ton."[3]

The overpayment resulting from this mistake was $174,000.

There was the usual mistake over progress payments, this time amounting to $21,750, making a total overpayment of $195,750.

The agreement signed by Christoffer Hannevig A/S states the price as follows:

Cash	$474,150
9 installments as work proceeds at $60,900	548,100
	1,022,250

[1] U. S. Counter-case, Appendix, page 386.
[2] Norwegian Case, Documentary Evidence, page 261.
[3] Norwegian Case, page 226.

It is difficult to reconcile this specific statement of progress payments at $60,900 with the subsequent development that the progress payments were only $39,150.[1]

The figure of $60,900 was written down by one company owned by Hannevig and related to a contract between two other companies controlled by Hannevig. Also, Hannevig himself was in Norway, and, presumably, knew the terms of the contracts in which he was dealing.

The circumstances indicate that no mistake was made in Norway so far as the contract price was concerned. With Bullowa active at the American end, it is far more likely that the contracts were changed from $140 to $180 per d. w. t.

Evidence of Payment.

As evidence of payment the Kingdom of Norway prints a declaration from Haugesunds Kreditbank to the effect that on Sept. 20, 1917, it transferred $474,150 to Christoffer Hannevig A/S, covering purchase money for Pusey & Jones new building No. 12.

This agrees with the amount shown in Capt. Hanssen's brief of Nov. 5, 1919. However, the brief contained a claim for $76,164.30 for expenses, interest, commissions, etc., not now included in the claim, except insofar as the interest is included.

Additional expenses "not hitherto presented" are shown in the Norwegian Counter-case Appendix in the amount of Kr. 68,376.78.[2]

These expenses, however, are apparently simply given by way of good measure, inasmuch as the Norwegian Counter-case (conclusion 8) only asks for the amount previously claimed.[3]

The United States requests this honorable Tribunal to consider this claim in the light of the expressions of the Christiania Court in *a similar case*. The American Government should not be expected to pay losses in Norwegian transactions which have been so plainly branded by the Courts of Norway.

It is prayed that the award of this Tribunal be limited to a maximum of $39,720, which the United States believes is complete and just compensation for the property requisitioned.

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[1] Norwegian Case, page 226.
[2] Norwegian Counter-case, Appendix, page 245.
[3] Norwegian Counter-case, page 102.

CLAIM NO. 10.

1. Claimant: The Haug Steamship Company, Karluf Hanssen, Manager.

2. Account: Hull No. 1013, a 4350 ton d. w. steamer known as "Fishers Island."

3. Builder: The Pusey & Jones Company.

4. Amount Claimed: $580,093.48.

5. Original Contract Dated: June 12, 1917, according to claim.

6. Contract Price: $783,000 or at the rate of $180 per ton according to claim.

7. Contract Delivery Date: February 1, 1919.

8. Percentage of Completion on August 3, 1917, 0.7%.

9. Keel Laid: May 15, 1919.

10. Ship Delivered: May 1, 1920.

11. Original Owner: Bulk Oil Transports, Inc.

12. Owner on August 3, 1917, Bulk Oil Transports, Inc.

13. Progress Payments by Former Owners: $39,150.

14. Amount conceded by the United States as just compensation: $39,720.

15. Assignments As Claimed in the Norwegian Case:

August 30, 1917, from Bulk Oil Transports, Inc., to Christoffer Hannevig;

Sept. 8, 1917, Christoffer Hannevig to Tryggve Sagen;

Oct. 1, 1917, Tryggve Sagen to the Haug Steamship Co.

The Claim is made up as follows:

Cost of contract to the Haug Steamship Co.:

Installment of contract price paid to yard and repaid to vendor	$39,150
Premium paid to vendor	374,310.94
Total	413,460.94
Add interest	166,632.54
Grand total claimed	580,093.48

Another Speculation with Guarantee Against Loss.

To state the arguments against this claim would involve a reiteration of what has been said on Claim No. 9. The general circumstances surrounding the transaction are the same in both cases.

It was the usual Hannevig transaction. The Bulk Oil Transports, Inc., a Hannevig Company, had a contract for the construction of a ship by Pusey & Jones, another Hannevig Company. After requisition and under date of August 30, 1917, Ralph James Bullowa, for the Bulk Oil Transports, Inc., assigned the contract to Hannevig for a nominal consideration. On Sept. 8, 1917, Hannevig entered into an agreement with Tryggve Sagen selling the contract at a price of $235 per d. w. t.

There is the same evidence of intent to build up a claim against the United States as is found in the other Hannevig transactions. The agreement between Hannevig and Sagen provided that if the ship was not ready from the shipyard by August 1, 1919, Mr. Sagen had the right to cancel the purchase and demand all payments returned on the same date with interest at 5%.

The American Indemnity Clause.

It provided, also, as follows:

"In case the ship is requisitioned by the American Government, and the compensation does not cover the payments made by the purchaser, the difference including interest shall be covered by Mr. Hannevig."

This agreement is signed for Hannevig by his lieutenant Sven Bjork. Tryggve Sagen's signature is witnessed by Hannevig's associate Harry Borthen. Borthen and Sagen were both directors in the Ostlandet Steamship Company. Borthen was later identified with H. Karluf Hanssen and E & N Chr. Evensen in floating the Solhaug Steamship Company to operate the "*Fire Island*" formerly one of Christoffer Hannevig's ships.[1]

Tryggve Sagen kept the contract for Hull No. 1013 until October 1, 1917, when he transferred it to the Haug Steamship Company, the present claimant.

A statement from the Haugesund Privatbank shows $609,210 paid by the Haug company to Tryggve Sagen on October 1, 1917.[2]

The consideration for the transfer from Sagen to the Haug Company is not shown, but the payment of $609,210 certified to by the Haugesund Privatbank serves to fix the price at $266 per ton, which agrees with the statement on page 172 of the Norwegian Case. Ac-

[1] U. S. Counter-case, Appendix, page 357.
[2] Norwegian Case, Documentary Evidence, page 268.

cordingly it appears that the resale premiums on the transaction were as follows:

Resale profits to Hannevig	$239,250.00
Resale profits to Sagen	135,060.94
Total	374,310.94
Add alleged contract price	783,000.00
Total price to Haug	1,157,310.94

Rate per d. w. t. $266.00.

The Haug Company acquired the contract long after it was fully apparent that ships in America had been requisitioned. The remarks of the Christiania Court in connection with Claim No. 9 apply even more forcibly here, for the claimant had had an even longer opportunity to become assured that in buying a contract, all that could be acquired was a claim for indemnity.

The Mistake Over Contract Price.

Here again we find the same familiar mistake over contract price. Here was the same supposition that the original contract price was $140 per ton and the progress installments $60,900 followed by the same discovery that the price was in fact $180 per ton and the progress payments $39,150, all resulting in an overpayment to Hannevig of $195,750.

However, in this case there is evidence that if Hannevig made a mistake about the contract price, it was not a casual error, for the agreement he signed with Tryggve Sagen declared that the original contract price was $140 per ton.

The contract of sale to Sagen says:

"The difference between this price and the original contract price ($140 per ton) plus the already paid ten percent of the original contract price shall be paid when the purchase is finally closed, *which shall be when Mr. Sagen's experts have gone through and reported by cable the documents of the case in New York which shall be placed at his disposal by Mr. Hannevig's representative there.*"[1]

Evidence That Contract Was $140 per D. W. T.

The italicized portion of the provision quoted above has a significance which should not be overlooked. Sagen's experts were to go over the documents in New York and report by cable before the purchase was closed.

[1] Norwegian Case, Documentary Evidence, page 267. Italics ours.

It is to be presumed that Mr. Sagen did take this precaution and that his experts did examine the contract and other documents in New York. If they had found a contract at $180 per ton instead of $140 surely they would have reported that fact. The inference is that they were shown a contract in New York which agreed with Hannevig's representations in the sale agreement as otherwise the purchase would not have been closed. The contract at the higher rate was not discovered then, for if it had been, Mr. Sagen would hardly have paid Hannevig $195,750 in excess.

Altogether, it is a very mysterious transaction. One possible explanation is that Bullowa, with all his confessed propensity for improving on the dates and prices of contracts, did not dare at the time to break up a good sale by showing a newly manufactured contract at the higher amount.

Whatever the explanation may be, the facts strongly indicate that the price used by Hannevig was the correct price and that the contract at $180 was introduced later on as a part of the plan to get the largest possible amount out of the vendees, the American government, or both.

H. Karluf Hanssen in taking over the contract for the Haug Company, probably relied upon investigations already made by Mr. Sagen. At any rate, there is no evidence that the contract at $180 had been discovered on Oct. 1, 1917, when the Haug Company took over the contract.

It is respectfully but earnestly submitted that it is the duty, not of the United States, but of Norway, to go to the bottom of the sale of the Bulk Oil contracts which resulted in overpayments of about one million dollars, and to show that the claims as at present presented to this honorable Tribunal are wholly clear from all connection with the "mistake" in which they originated or any similar mistake which swells the claims for damages now preferred against the United States.

The United States asks that the award in this case be not more than $39,720.

CLAIM NO. 11.

1. Claimant: The Mercator Corporation.

2. Account: Hull No. 1014, a steel cargo steamer of 4350 tons d. w. known as the "Shelter Island."

3. Builder: Pusey & Jones Company.

4. Amount Claimed: $609,083.36.

5. Original Contract Dated: June 12, 1917, according to claim.

6. Contract Price: $761,250, or at a rate of $175 per ton, according to claim.

7. Contract Delivery date: March 1, 1919.

8. Percentage of completion on August 3, 1917: 0.7%.

9. Keel Laid: July 1, 1919.

10. Ship Delivered: July 30, 1920.

11. Original Owner: Bulk Oil Transports, Inc.

12. Owner on August 3, 1917: Christoffer Hannevig.

13. Progress payments by former owners: $38,062.50.

14. Amount conceded by the United States as just compensation: $38,600.

15. Assignments As Claimed in the Norwegian Case:

June 30, 1917, from Bulk Oil Transports, Inc. to Christoffer Hannevig.

September 8, 1917, from Christoffer Hannevig to Tryggve Sagen.

October 1, 1917, from Tryggve Sagen to Mercator Corporation.

Assignments as shown in Documentary Evidence submitted by the Kingdom of Norway:

August 30, 1917, from Bulk Oil Transports, Inc. to Christoffer Hannevig.

September 8, 1917, from Christoffer Hannevig to Tryggve Sagen.

October 1, 1917, from Tryggve Sagen to Lars Maeland.

October 1, 1917, from Lars Maeland to Mercator Corporation.

The Claim is made up as follows.

Cost of contract to the Mercator Corporation:

Installment of contract price paid to the yard and repaid to the vendor	$ 38,062.50
Premium paid to vendor	396,060.94
Total	434,123.44
Add interest	174,959.92
Grand total claimed	609,083.36

Another Hannevig Transaction Like That In Claim No. 10.

The transaction leading to Claim No. 11 was almost precisely the same as that already described in the discussion of Claim No. 10. There was the same kind of assignment by Bullowa to Christoffer Hannevig under date of August 30, 1917, and the same kind of assignment by Hannevig to Tryggve Sagen under the same date, Sept. 8, 1917.

The price to Sagen was the same, $235 per ton, and the wording of the agreement was the same. The original price was stated at $140 per ton, and the purchase was to close after Sagen's experts in New York had gone over the documents in New York. There was the usual mistake over contract price and the usual overpayment to Hannevig, this time in amount of $175,087.50.

The Same Provision For Indemnity From America.

The provision that Hannevig should cover any difference between the price paid by Sagen and the compensation by the American Government was similar to the same provision in the agreement covering the transfer of Hull 1013.

Sagen Transfers to Karluf Hanssen Corporation as in Last Case.

On October 8, 1917, Sagen assigned to the Mercator Corporation, through Lars Maeland. The price was $266 per ton, exactly the same as in the case of Hull 1013. The Mercator Corporation was another corporation represented by H. Karluf Hanssen, who had many business dealings with Christoffer Hannevig.

Harry Borthen, Hannevig's associate, was a witness to the Sagen assignment, and Sven Bjork, Hannevig's lieutenant, signed the sale agreement for Hannevig. In other words, it was the same intimate arrangement as was disclosed in connection with Claim No. 10.

As evidence of payment, the Norwegian Case presents a statement showing the payment of Kr. 1,949,475 on Oct. 1, 1917 through Den Norske Handelsbank. This was signed by the Haugesund's Kreditbank. It is not a contemporaneous document, but bears the date of August 30, 1919.

The position of the United States government on this claim is the same as that already announced in connection with claim No. 10. It is respectfully submitted that the award for just compensation should not exceed $38,600.

CLAIM NO. 12.

1. Claimant: Sorlandske Lloyd Corporation, Karl A. Thorbjornsen, Manager.

2. Account: Hull No. 203, a 5000 ton d. w. steamer known as the "*Castletown.*"

3. Builder: New Jersey Shipbuilding Company, (Pusey & Jones).

4. Amount Claimed: $277,871.43.

5. Original Contract Dated: June 1, 1917, according to claim.

6. Contract Price: $875,000, or at the rate of $175. per ton according to claim.

7. Contract Delivery Date: October 31, 1918.

8. Percentage of completion on August 3, 1917, less than 0.5%.

9. Keel Laid: July 3, 1918.

10. Ship Delivered: June 9, 1919.

11. Original Owner: Manss Steamship Corporation.

12. Owner on August 3, 1917: Manss Steamship Corporation.

13. Progress Payments by Former Owners: $21,875.

14. Amount conceded by the United States as just compensation: $22,260.

15. Assignments as Claimed in the Norwegian Case:

August 30, 1917, from Manss Steamship Co. to Sorlandske Lloyd Corporation.

The Claim is made up as follows:

Cost of contract to the Sorlandske Lloyd Corporation:

Installments of contract price paid to the yard and repaid to the vendor	$21,875.
Premium paid to vendor	175,000.
total	196,875.
Add interest	80,996.43
grand total claimed	277,871.43

A Hannevig Transaction.

The transaction leading up to this claim was one involving Christoffer Hannevig, his dummy companies, and his close associates. The companies involved were:

1. New Jersey Shipbuilding Company, owned by Christoffer Hannevig;

2. Manss Steamship Company, owned by Christoffer Hannevig;

3. Sorlandske Lloyd Corporation, in which Christoffer Hannevig was a director.

Den Norske Handelsbank which was used in so many of the Hannevig transactions figures also in this case.

The Sorlandske Lloyd Corporation was a Hannevig organization although that fact is very aptly concealed in the statement of Karl A. Thorbjornsen. As already has been shown in connection with claim No. 5, Christoffer Hannevig was one of the four directors. Mr. Thorbjornsen, in his statement in the Norwegian Case, does not reveal this fact. He said:

"As above mentioned, the Company was formed in July, 1916, and the board of directors was as follows:
"Mr. Anth. Olafsen,
"Mr. Harry Borthen, and
"Mr. A. Thorbjornsen, the latter being also managing owner."[1]

Mr. Thorbjornsen was identified with Christoffer Hannevig in the sale of Hull No. 17 built by Skinner & Eddy, which, according to the Norwegian claim was transferred to the Sorlandske Lloyd Corporation in which Hannevig was a director. Thorbjornsen was a director in the Baltimore Steamship Company which is claimant under Claim No. 3 on account of Hull No. 95 built by the Seattle Construction & Dry Dock Company. The transfer of Hull No. 95 to the Baltimore Steamship Company is one of the unsolved mysteries of the Norwegian case. The last transfer of the contract was to Christoffer Hannevig who endorsed to the order of his dummy company, the Baltimore South American Navigation Company.

Another associate of Hannevig in the Sorlandske Lloyd Corporation was Harry Borthen, who is claiming as an individual in Claim No. 14 on account of one of Hannevig's contracts, and who was also a director in the Ostlandet Steamship Company which bought from Christoffer Hannevig A/S, the contract on which it is claiming in Claim No. 6.

One of the August 30 Deals.

The assignment of the contract for Hull 203 on which claim 12 is based was another of the many assignments made by the Hannevig combinations under date of August 30, 1917. The Manss Steamship Corporation which made the assignment had as its secretary, Ralph

[1] Norwegian Case, page 205.

James M. Bullowa, a Hannevig utility man, and president of the Bulk Oil Transports, Inc.

There was no formal document transferring the contract to the Sorlandske Lloyd Corporation, but the contract as printed in the Documentary Evidence submitted by the Kingdom of Norway shows the following endorsement:

"To the order of A/S Sorlandske Lloyd 30th of August, 1917.
J. B. Simpson (Sign)
President."

Sorlandske Lloyd Corporation Assigned Contract But is Still Claiming as Owner.

Beneath the assignment to the Sorlandske Lloyd Corporation is the following assignment by the Sorlandske Lloyd Corporation:

"Our rights according to the above contract are hereby assigned in blank.

A/S Sorlandske Lloyd,
(Sign.) Karl A. Thorbjornsen."[1]

This assignment in blank requires some explanation which is given by Den Norske Handelsbank in the following certificate:

"Christiania.

"To Whom It May Concern

"We, Den Norske Handelsbank of Christiania, hereby certify that, we have demanded of the Sorlandske Lloyd of Christiania transfer in blank on the contract No. 3 between New Jersey Shipbuilding Company, Gloucester, New Jersey, and Manss Steamship Corporation, Wilmington, Delaware, regarding the building of a 5,000 ton cargo steamer, dated 1st June 1917, for the reason that the said contract has been lodged in our bank by the said Sorlandske Lloyd as security for loan.

"Christiania, September 10th, 1919.

Den Norske Handelsbank A/S
(Sign.) Sig Rinde."[1]

Certificate as to Payment.

Den Norske Handelsbank certifies the purchase price of $262,500 was paid. No date of payment is given. The certificate of payment follows:

"Christiania.

"To Whom It May Concern:

"We, Den Norske Handelsbank of Christiania, hereby certify that The Joint Stock Co. called the A/S Sorlandske Lloyd of Christiania

[1] Norwegian Case, Documentary Evidence, page 278.

through our bank has paid for contract No. 3 between New Jersey Shipbuilding Company and Manss Steamship Corporation, of Wilmington, Delaware, dated Philadelphia 1st of June, 1917, regarding building of a 5,000 tons cargo steamer, a sum of $262,500.

Christiania, August 23rd, 1919.

Den Norske Handelsbank A/S
(Sign.) Sig Rinde."[3]

The Sorlandske Lloyd also gives a statement concerning the purchase price as follows:

"Christiania.

New Jersey No. 3

The original contract price $175.00 per ton d. w. 5,000 tons	$875,000.
A. S. Sorlandske Lloyd as shown by bill of sale paid $210.00 per ton d. w	1,050,000.
Difference $35 per ton d. w	175,000.
1st installment paid	87,500.
	$262,500.

The above named amount was paid for account of A/S Sorlandske Lloyd by Den Norske Handelsbank, Christiania (see Exhibit 3).

A/S Sorlandske Lloyd
(Sign.) Karl A. Thorbjornsen.

Notary's certification.

Certification of Notary's signature by Vice Consul of American Consulate."[1]

It appears from the certificate of Den Norske Handelsbank that in this case like the other purchase by Sorlandske Lloyd, the money was obtained by a loan and did not represent an investment by the company purchasing the contract.

A "Mistake" Over Progress Payments.

As was usual in the case of Hannevig transactions, there was a mistake concerning the amount of money Hannevig's Manss Steamship Company had paid to Hannevig's New Jersey Shipbuilding Company. The result of this was that Thorbjornsen allegedly paid $65,625 too much. This is explained by the Norwegian Case as follows:

"On August 30, 1917, the contract was assigned by the Manss Steamship Company to the Sorlandske Lloyd Company for a consideration of $262,500. Of this amount $65,625.00 was an overpayment for which the purchaser will look to his vendor and not to the United States. At the time of the purchase of this contract by the present owner it was understood that the Manss Steamship Company,

[3] Norwegian Case, Documentary Evidence, page 279.

the original contractor, had paid $87,500 to the shipyard as a first installment payment. Accordingly the purchaser paid as part of the purchase price an amount equal to this supposed payment of $87,500. In fact, the said Manss Steamship Company had paid only $21,875 in cash, and for the balance had given its notes. These notes have never been paid. The purchaser therefore made an overpayment of $65,625. which in computing its claim against the United States, has been deducted from the cost price of the contract."[1]

The Language of the Norwegian Supreme Court Applies Here.

It is respectfully submitted that the decision of the Supreme Court of Norway in the case of the "*Bestum II*," contains language which perhaps describes the motives in this transaction better than they could be described by the representatives of the United States. The Court said:

"And as far as I can see there was fully within what a practical estimate might consider as an obtainable result. a possibility that such a purchase would gain a profit for the purchaser which would compensate his risk, viz., the possibility that the decree would be declared to be for use during the time of the war or for a short period afterwards, or that the "just compensation" promised would be fixed generously enough,—or of effectuating a sale to a third party before the reading of the decree was finally determined. According to all evidence in the case I consider it the most probable understanding of the purchase concluded between the parties that it had for its object a matter of speculation of this character. The agreement should then be considered as a "purchase of a chance." Its object is what profit could be made by the new building contract in question, a contract with a weak point, of which it was to be hoped that it would not make the purchase impossible, but which on the other hand gave every reason for fearing the contrary."[2]

Could Not Have Secured Delivery.

The Supreme Court also made a statement which was particularly true in the case of the New Jersey Shipbuilding contracts. The statement follows:

"With regard to the first point, of which the counter appellant thus must be presumed to have no knowledge, it is clear in my opinion that he must have had full knowledge that, if the decree was carried out to the extent allowed to the President of the United States and through him to the Shipping Board, it would deprive the holders of the new-building contracts concerned of all claims for delivery according to contract."[3]

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[1] Norwegian Case, pages 233 and 234

[2] U. S. Counter-case, Appendix, pages 401–402.

[3] U. S. Counter-case, Appendix, page 401.

However the reason stated by the Court was not the only reason why it would have been impossible for the owner of the contract to secure delivery from the New Jersey Company. In the Appendix to the Case of the United States opposite page 212 there is a reproduction of a photograph taken on August 1, 1917, which shows that at that time the plant of the New Jersey Shipbuilding Company was practically a barren waste. Hannevig was in desperate financial straits, and it is evident from the record before the Tribunal that he would never have been able to finish the yard, much less the building of ships he had contracted to build.

Condition of Pusey & Jones Co.

The financial condition of Pusey & Jones is indicated by a letter of August 30, 1917, sent the very day that the contract for hull 203 was assigned to Sorlandske Lloyd Corporation. In that letter the Company's assistant treasurer stated:

"We find ourselves at this time greatly in need of working capital. * * * The funds to take care of these improvements have been borrowed on the notes of the company. You can readily understand therefore that our borrowing capacity for working capital is very much handicapped. * * * We therefore respectfully request that on the eight vessels under contract between this company and the Cunard Steamship Company which have been requisitioned by your corporation you make the next two payments specified in these contracts in advance of the dates they will normally fall due as follows: * * *"[1]

The financial condition of the New Jersey Shipbuilding Company is indicated in a letter dated December 17, 1917, from Ralph James Bullowa to the Emergency Fleet Corporation. Mr. Bullowa said:

"*The situation briefly is this: Mr. Hannevig expected to be able to finance the completion of New Jersey through the sale of contracts to Norwegian buyers where the price would be $250 per ton.* This source has been cut off by the action of the Emergency Fleet. It is also impossible to deal in new buildings or arrange any reasonable communications with his interests in Norway, and, therefore, Mr. Hannevig finds that certain of his financial resources for the present are dormant, and he does not wish to unduly tax with the present outlook his resources in this country.

"The position to-day is, therefore, with the New Jersey Shipbuilding Company, they find themselves without funds for the reasons above stated.

"In order not to delay the construction of the vessel it will, therefore, be necessary to find about one and one-half million dollars, which can be done in the following manner: * * *"[2] [Italics ours.]

[1] U. S. Case, Appendix, page 229.
[2] U. S. Case, Appendix, page 276.

The Company's Desperate Situation.

That the New Jersey Shipbuilding Company could not have completed its plant without assistance from the Fleet Corporation is further shown by an urgent telegram from the New Jersey Company to the Emergency Fleet Corporation as follows:

"Dec. 21, 1917.

"Pending negotiations between yourselves and Mr. Christoffer Hannevig all funds available for building our plant are practically exhausted and payments overdue for building steel and lumber stop deliveries are being stopped on material urgently needed to complete the plant and we are notifying you so that you may take such action as you may deem expedient and request you to kindly instruct us as to what you wish us to do."[1]

As a result of this urgent telegram the Fleet Corporation advanced $100,000 to the New Jersey Shipbuilding Co., the arrangement being made immediately upon receipt of the telegram of Dec. 21st, as shown by the following letter:

"December 21, 1917.

Interoffice Memorandum
Memorandum Mr. Bender-New Jersey Shipbuilding Co.

Please advance to the New Jersey Shipbuilding Company immediately one hundred thousand dollars ($100,000) on account of completion of requisitioned ships and pending completion of negotiations with them.

This money is urgently needed to prevent delay in delivery of materials.

F. T. Bowles,
Manager Division Steel Ship Construction."[1]

This was the beginning of advances by the Fleet Corporation under which the New Jersey yard was finally completed.

The United States respectfully submits that the award in this case should not be in excess of $22,260.

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[1] U. S. Case, Appendix, page 279.

CLAIM NO. 13.

1. Claimant: H. Kjerschow.

2. Account: Hull No. 205 a steel cargo steamer of 5,000 tons d. w. known as the "*Castlebridge.*"

3. Builder: New Jersey Shipbuilding Company.

4. Amount of Claim: $627,500.16.

5. Original Contract Dated: June 1, 1917, according to claim.

6. Contract Price: $875,000, or at the rate of $175 per ton according to claim.

7. Contract Delivery Date: December 31, 1918.

8. Percentage of completion on August 3, 1917: less than 0.5%.

9. Keel was never laid, ship cancelled by the Fleet Corporation.

10. Original Owner: Manss Steamship Corporation.

11. Owner on August 3, 1917: Manss Steamship Corporation.

12. Progress payments by Former Owners: $21,875.

13. Amount conceded by the United States as just compensation: $22,260.

14. Assignments As Claimed in the Norwegian Case:

August 30, 1917 from Manss Steamship Company to Karl A. Thorbjornsen;

October 1, 1917, Karl A. Thorbjornsen to H. Kjerschow.

The Claim is made up as follows:

Cost of contract to H. Kjerschow:

Installments of contract price paid to the yard and repaid to vendor	$21,875
Premium paid to vendor	425,375
total	447,250
Add interest	180,250.16
grand total claimed	627,500.16

In most respects this claim is very similar to the preceding one (Claim No. 12.) The contract was transferred on August 30, 1917 by the Manss Steamship Corporation to Karl A. Thorbjornsen whose identity with Hannevig transactions has been so fully shown in the case of Claim No. 12 and Claim No. 5.

Thorbjornsen Got Rid of the Contract.

The only difference between this claim and Claim No. 12, is that Thorbjornsen succeeded in transferring the contract. It is one of the results which the Supreme Court of Norway had in mind when it named the various possibilities in the minds of the purchaser and included as one of these possibilities the possibility of "effectuating a sale to a third party before the reading of the decree was finally determined."[1]

The assignment to Mr. Thorbjornsen by the Manss Steamship Corporation did not name a real consideration; it gave a nominal consideration of $100. and other good and valuable consideration.[2]

There is nothing to indicate that Mr. Thorbjornsen paid anything for the contract.

Purchase by Kjerschow.

The Norwegian Case, Documentary Evidence prints a translation of the formal purchase contract under which Mr. H. Kjerschow obtained the contract for Hull 205 from Thorbjornsen. It shows that the buyer was to pay $257.50 per ton.

Thorbjornsen himself did not assign this contract, but it was assigned for him by Christoffer Hannevig, Inc. over the signature of Christoffer Hannevig's lieutenant Sven Bjork.[3]

The contract of purchase was dated October 1, 1917, and on the same date Thorbjornsen signed the following assignment to Kjerschow:

"I hereby transfer my rights and obligations to Contract Number 5 by the New Jersey Shipbuilding Company to Mr. H. Kjerschow.
Christiania, October 1, 1917.
(Sign.) Karl A. Thorbjornsen."[4]

Every Cent Obtained From the Bank.

That the parties did not put up their own money is indicated by a bank statement from Klaveness' Bank which reads as follows:

"Kristiania.

"We hereby declare that we at the request of Mr. H. Kjerschow have made the following payments in connection with the new building No. 5 by New Jersey Shipbuilding Co.:

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[1] U. S. Counter-case, Appendix, page 401.
[2] Norwegian Case, Documentary Evidence, page 285.
[3] Norwegian Case, Documentary Evidence, page 286.
[4] Norwegian Case, Documentary Evidence, page 287.

"On the 2nd October, 1917 to:

Mr. Karl A. Thorbjornsen	$500,000.00
Hannevig Brothers A/S	12,875.00
	512,875.00
At rate of 3/21	Kr. 1,646,328.75
Commission and interest on the loan of Kr. 1,646,328.75 from 2-10-17 to 1-11-19	231,226.86
	Kr. 1,877,555.61

Declared true and correct extract from our books.
Kristiania, September 8th, 1919.

Kalveness' Bank, Aktieselskap,
(Sign.) (Illegible)[3]

The above bank statement shows clearly that the entire amount of 1,646,328.75 kroner which included the commission to Hannevig Brothers A/S was obtained as a loan.

In addition to the commissions shown above the Norwegian Counter Case on page 247 shows bank commissions from Oct. 2, 1917, to April 3, 1922, in the amount of 64,911.31 kroner; traveling expenses of Kr. 8,338.60, or a total of Kr. 73,249.91. The amount of the claim, however, has not been increased. In the case of Hull 205 it would have been impossible for the purchaser to have obtained delivery of the ship, not only for the reason stated by the Supreme Court of Norway as quoted in connection with Claim No. 12, but because of the financial inability of Christoffer Hannevig to complete the yard of the New Jersey Shipbuilding Company. In this case as in all the cases of the New Jersey Shipbuilding Company hulls, the former owner was fortunate in that the Emergency Fleet Corporation requisitioned the ships as the requisitioning will result in the return of the progress payments. It is highly probable that but for the requisitioning every cent paid to the shipbuilder would have been lost.

Of course the United States cannot know the exact motives which actuated Mr. Kjerschow in making this purchase, but it is only fair to assume that they were the same as the motives described by the Supreme Court of Norway in the case of the Bestum II as follows:

"On the contrary I am led to assume that the main point in the considerations which led to his purchase, was not what was the exact significance of the requisitioning decree of Aug. 3rd but the estimate

[3] Norwegian Case, Documentary Evidence, page 287.

of the various possibilities which were offered as far as the final American arrangement was concerned regarding the new building which was the object of the transaction. Seen in the light of the facts known to the parties at the time of the purchase these possibilities gave wide scope for speculation in the final settlement of the affair."[1]

Judging by the record before the Tribunal Mr. Kjerschow was not so careful in taking precautions to insure himself against loss in case the indemnity obtained from the American Government should be less than the amount paid for the contract. It may be that he obtained from Hannevig or Thorbjornsen some guarantee that they would make up the difference, but if so, the agreement is not printed in the Norwegian Case.

The customary mistake and overpayment as in the case of every one of the 9 Pusey & Jones and New Jersey Shipbuilding Company ships involved in the Norwegian claims, was made in the sale of the contract. In this case the purchaser claims to have paid $65,625 in excess of the proper amount. The Norwegian Case explains that this was because it was understood that the Manss Steamship Company had paid $87,500 to the shipyard as a first installment, whereas as a matter of fact, it had paid only $21,875.

The United States respectfully requests that the award in this case be limited to $22,260.

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[1] U. S. Counter-case, Appendix, page 401.

CLAIM NO. 14.

1. Claimant: Harry Borthen.

2. Account: Hull No. 206, a steel cargo steamer of 5,000 tons d. w., known as the "Castlecrag."

3. Builder: New Jersey Shipbuilding Company.

4. Amount Claimed: $207,300.90.

5. Original Contract Dated: June 1, 1917, according to claim.

6. Contract Price: $875,000, or at a rate of $175 per ton, according to claim.

7. Contract Delivery Date: January 31, 1919.

8. Keel was never laid; ship cancelled by the Fleet Corporation.

9. Percentage of Completion on Aug. 3, 1917: less than 0.5%.

10. Original Owner: Manss Steamship Corporation.

11. Owner on August 3, 1917: Manss Steamship Corporation.

12. Progress payments by former owners: $21,875.

13. Amount conceded by the United States as just compensation: $22,260.

14. Assignments As Claimed in the Norwegian Case: August 30, 1917 from Manss Steamship Corporation to Harry Borthen.

The Claim is made up as follows:

Cost of contract to Harry Borthen:

Installment of contract price paid to yard and repaid to vendor	$21,875.
Premium paid to vendor	125,000.
total	146,875.
Add interest	60,425.90
grand total claimed	207,300.90

Another Hannevig Transaction, of August 30, 1917.

The assignment to Harry Borthen under date of August 30, 1917, was one of a number of assignments put through that day by Hannevig's two companies, the Manss Steamship Corporation and the Bulk Oil Transports, Inc., No consideration was shown in the assign-

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ment to Borthen, except $100.[1] As has already been shown, Harry Borthen was one of Hannevig's associates in various transactions now involved in the Norwegian claims. With Christoffer Hannevig and Thorbjornsen he was one of the directors of the Sorlandske Lloyd Corporation. Borthen was also a director in the Ostlandet Steamship Company which is claiming under claim 6, on account of hull No. 2 which was sold by Christoffer Hannevig A/S to the Ostlandet Steamship Company.

Den Norske Handelsbank certifies that Borthen paid $212,500. for the contract. The bank certificate is as follows:

"To Whom it May Concern: Christiania.

"We, Den Norske Handelsbank of Christiania, hereby certify that:

Mr. Harry Borthen of Christiana through our bank has paid for the contract No. 206 between New Jersey Shipbuilding Co. New Jersey, and Manss Steamship Co. with	$212,500.00
Further paid accrued interest from 8-30-17 to 8-30-19 at 7 percent per annum with	31,085.10
Further bank commission 1 percent per annum with	4,250.00
Further interest on the said commission at 7 percent per annum from 8-30-17 to 8-30-19 at 7 percent per annum with	595.83

Christiania, the 22nd August, 1919.

Den Norske Handelsbank A/S.

(Sign.) Sig Rinde."[2]

The Usual Overpayment.

The discrepancy between the $212,500. certified in the above bank statement and the amount of $146.875 as stated in the claim is made up by an amount of $65,625 represented by an overpayment to the Hannevig Company. There is the usual explanation in the Norwegian Case to the effect that at the time of purchase it was understood that the Manss Steamship Corporation had paid $87,500 as the first installment payment, whereas in fact it paid only $21,875.

Mr. Borthen in a statement contained in the Norwegian Case says:

"Surely there was no owner who thought that the American Government had any other intention, but merely to secure the control of the tonnage during the war.

"That they had the intention of securing a commercial marine after the war, nobody on this side had dreamed of. The willingness shown by the American Government to negotiate with the special 'Nansen' commission that was sent over to the States to try to form an agreement between the interested parties made us believe that U. S. A.

[1] Norwegian Case, Documentary Evidence, page 291.
[2] Norwegian Case, Documentary Evidence, page 292.

wished to meet us in a friendly way and the notes in the newspapers from time to time could not be read in any other way.

"When our Foreign Department in October, 1917, advised us of the definite requisition, this of course turned upside down all my calculations."[1]

Notwithstanding Mr. Borthen's statement it may fairly be said that his purchase of this contract falls within the language of the Supreme Court of Norway already quoted in connection with the previous claim. Also it falls within the language of the judgment rendered by the Christiania Court in the case of B. Stolt-Nielsen vs. Bjorn Bjornstad and Company to the effect that after August 17, 1917, the prospect of securing ships did not seem to have been very bright but that in spite of this, plaintiff had bought the contract and in so doing had assumed the risks and chances.[2]

The Norwegian Counter-case has presented a statement of additional expenses incurred by the claimant on the purchase of this contract. These expenses including Bank Commissions, & travelling expenses, amounted to Kr. 18,917.50. Presumably these expenses have no relation to the claim as the Agent of the Kingdom of Norway says distinctly in paragraph 8 of his conclusions that the Kingdom of Norway on behalf of the members of the Christiania Group is entitled to an award of the amounts previously claimed.[3]

The United States respectfully requests that this Tribunal limit its award of just compensation in this case to the amount of $22,260.

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[1] Norwegian Case, page 241.
[2] U. S. Counter-case, Appendix, page 387.
[3] Norwegian Counter-case, page 102.

CLAIM NO. 15.

1. Claimant: E & N Chr. Evensen.

2. Account: Hull No. 204, a steel cargo steamer of 5,000 tons d. w. known as the "*Castlepeak*".

3. Builder: New Jersey Shipbuilding Company.

4. Amount Claimed: $591,788.29.

5. Original Contract Dated: June 1, 1917, according to claim.

6. Contract Price: $875,000, or at a rate of $175 per ton, according to claim.

7. Contract Delivery Date: November 30, 1918.

8. Percentage of Completion on August 3, 1917: less than 0.5%.

9. Keel was never laid; ship cancelled by the Fleet Corporation.

10. Original Owner: Manss Steamship Corporation.

11. Owner on August 3, 1917: Manss Steamship Corporation.

12. Progress payments: $21,875.

13. Amount conceded by the United States as just compensation: $22,260.

14. Assignments As Claimed in Norwegian Case:

August 29, 1917 from Manss Steamship Corporation to Jens Bing;

October 2, 1917 from Jens Bing to E & N Chr. Evensen.

The claim is made up as follows.

Cost of contract to E & N Chr. Evensen Inc:

Installment of contract price paid to yard and repaid to vendor	$21,875.
Premium paid to vendor	400,000
total	421.875
Add Interest	169,913.29
grand total claimed	591,788.29

Another Hannevig Transaction.

This claim grows out of assignments in which Christoffer Hannevig's companies were concerned. As in the case of the last three claims the contract was between two of Hannevig's companies. It was assigned on August 29, 1917 from the Manss Steamship Corporation to Jens Bing.

Mr. Bing was manager of the Baltimore Steamship Company which is claimant under Claim No. 3, on account of Hull No. 95, the

contract for which was assigned to Christoffer Hannevig under date of Sept. 18, 1917.

The assignment from the Manss Steamship Corporation to Jens Bing shows a consideration of $100.

The contract was assigned by Jens Bing to E & N Chr. Evensen on October 2, 1917, the consideration shown being $100 and other good and valuable consideration.

Hannevig Receipts for Purchase Price.

That Jens Bing was not in reality the bona fide owner of the contract is strongly suggested by the fact that Christoffer Hannevig acknowledged the payment of Kr. 1,584,375 as shown by a document printed in the documentary evidence submitted by the Kingdom of Norway, as follows:

Christiania,
October 3, 1917.

"Messrs. E & N Chr. Evensen,
Christiania.

Gentlemen: We have received your favor of yesterday and have also got information from The Norske Handelsbank regarding your payment of Kr. 1,584,375, and beg to thank you for same.

We have cabled our New York office and our attorney in New York in conformity to your instructions and take it for granted that the matter is thus settled.

Yours truly,

pr. pr. Christoffer Hannevig.
Sven Bjork.[1]

It will be noted that Hannevig's Lieutenant Bjork signed for Christoffer Hannevig on the foregoing document. However it appears from another statement by Hannevig A/S that the Hannevig Company was acting only as broker in the transaction. This statement follows:

"Christiania (Norway).

At request we hereby beg to certify that we on the September 14th, 1917, as brokers sold a steamer contract, viz.: New Jersey Shipbuilding Co. contract No. 4 (5000 tons d. w.) from Mr. Jens Bing of this city as seller to Messrs. E & N Chr. Evensen as buyers, at a price of $255.00 per ton d. w. against a cash payment of $487,500.00 or Kr. 1,584,375.00, which payment was duly effected by the said E & N Chr. Evensen's request cabled our New York Office, instructing them to see to the transport of the contract to Messrs. E & N Chr. Evensen being effected, and that the contract was to be handed over to Messrs.

[1] Norwegian Case, Documentary Evidence, page 300.

Brown Brothers, Bankers, New York, for account of Andresens Bank, A/S Christiania.

This statement is made out in triplicate.

pr. pr. Christoffer Hannevig A/S
(Sign.) Sven Bjork

Christiania, March 12, 1919."[1]

The Norwegian Counter-case prints a contemporaneous document signed by Andresens Bank showing that on October 2, 1917, $487,500 was transferred to Mr. Christoffer Hannevig. This puts another light on the transaction. The statement of Andresens Bank follows:

"Christiania, Oct. 2, 1917

Messrs. E & N Chr. Evensen,
Christiania.

In re: 5,000 tons—contract No. 4, New Jersey.

Dear Sirs: We are in receipt of your favor of this date and have in compliance to your request before 12 o'clock today transferred to Mr. Christoffer Hannevig $487,500 at the rate of exchange of 3.25 Kr. 1,584,375—which amount we have charged up against a separate account denominated: '5,000 tons newbuilding No. 4 at New Jersey,' and we hold you, as well as Mr. Anders Evensen and Mr. A. Lier responsible in solidum.

In security of the debt due on this account at any time, the contract shall be deposited in our name with Messrs. Brown Brothers & Co. of New York, who will acknowledge receipt of this direct to us. We understand that you have given the necessary instructions regarding this deposit.

We have charged up against the said account by today 2% of Kr. 1,584,375,—viz: Kr. 31,687.50 being the commission to us agreed upon.

Yours truly,

(Signed) Andresens Bank A/S,
Viktor Plahte,
O. Ore."[2]

The Counter-case presents additional expenditures incurred on the purchase of the contract not hitherto presented as follows:

"Claim No. 15.

Bank Commissions, Oct. 2, 1917–Dec. 31, 1921	Kr	48,299.52	
(Estimated) Jan. 1, 1922–Sept. 1, 1922	Kr		5,614.37
Traveling Expenses	Kr	14,786.51	
Operating Expenses, Oct. 1, 1917–March 20, 1922		78,628.89	
(Est) March 20, 1922–Sept. 1, 1922			6,666.67
Total	Kr	141,714.92	12,281.04
Grand total		153,995.96[3]	

[1] Norwegian Case, Documentary Evidence, page 301.
[2] Norwegian Counter-case, Appendix, page 241–242.
[3] Norwegian Counter-case, Appendix, page 247.

The arguments against the validity of claim No. 15 are the same as in claims Nos. 12, 13 and 14. There is the same evidence that the Hannevig influence is present in the transactions. The same mistake of $65,625 was made on the installment payments.

Another Story of the Transaction.

The Norwegian Case has failed to present the story of this transaction as first submitted to the Shipping Board under date of May 13, 1919, by Hart, Stevenson, Walton & Senior, Counsel for E. & N. Chr. Evensen. According to that statement of the transaction, the contract was sold on or about August 29, 1917 by the Manss Steamship Company to Jens Bing at $210. or an advance of $35 per ton. The claimants, through their counsel, stated as follows:

"Payment on first sale. On or about September 4, 1917, as we are further advised by said Bing, $262,500 was cabled from Christiania, Norway, through the Nordske Handelsbank for the account of the said Bing, to Christopher Hannevig, Inc., New York. This sum represented reimbursement to the Manss S. S. Corporation for the $87,500 called for upon the execution of the contract and $175,000 advance or increased value which the said Bing was paying for the contract."[1]

The foregoing statement is interesting because it purports to show that Bing declared that $262,500 had been cabled from Christiania through the Nordske Bank to Christoffer Hannevig, Inc. in New York. At no time either in the prior presentation or in the Case now before the Tribunal is there any evidence offered that such payment was ever made. The only evidence is that Evensens' lawyers said that the Evensens said that Bing said that $262,500 had been cabled. The United States is not disposed to quibble over such matters but does suggest that such an important question as the bona fides of the alleged sale by the Manss Steamship Company to Bing deserves the presentation of some evidence to show that a sale was made in good faith and payment received from Bing.

A Different Date For the Sale to Evensen.

In the presentation of 1919, the Evensen petition to the Shipping Board stated as follows:

"Authority to Resell. In the first half of September, 1917, the said Jens Bing, as he advises us, authorized Christopher Hannevig Akties-

[1] U. S. Counter-case, Appendix, page 283.

elskabet, of Christiania, Norway, to sell the said contract so purchased by him at $255 per ton dead weight, or for $45 per ton dead weight advance or increased value."[1]

Here again there is only the third hand statement that Bing authorized Christoffer Hannevig, Inc. to sell the contract. Evensens' lawyers take pains to qualify their statement by the use of the words "as he advises us."

The Norwegian Case shows that the assignment to Evensen was under date of October 2, 1917. However in the Evensen claim as submitted and sworn to in 1919, the sale is said to have been made on Sept. 14, 1917. The statement sworn to by Nils Christian Evensen, included the following:

"Sale to Claimants on September 14. On September 14, 1917, Christopher Hannevig Aktieselskabet sold the said contract to the firm of E. & N. Chr. Evensen, as brokers, at $255 per ton, or for an advance or increased value of $80 per dead-weight ton over the contract price, the terms of the contract being that the said firm reimburse Bing for the $87,500 paid to the builder upon the execution of the contract and pay an advance or increased value of $400,000 on the contract price, being at the rate of $80 per dead-weight ton. By the terms of the said contract of sale E. & N. Chr. Evensen had until October 5, 1917, to approve the documents in New York, i. e., the contract and specifications. In the event of nonapproval they could cancel or rescind the sale."[1]

Assignment Direct From Manss Steamship Corporation to Evensen is Dated Nov. 8, 1917.

The Norwegian case as now before the Tribunal includes a copy of an assignment sworn to by the President of the Manss Steamship Corporation under date of August 29, 1917, showing that under that date the Manss Company transferred the contract to Jens Bing.

In the 1919 presentation made by the Evensens through their attorneys, there is another assignment from the Manss Steamship Corporation to E. & N. Chr. Evensen under date of November 8, 1917. The language of the two assignments is the same with the exception that in one place Bing is named, and in the other case the Evensens are named. In one case the assignment is dated August 29, 1917, and in the other, November 8, 1917. Another difference is that the last assignment direct from the Manss Corporation to the Evensens is signed by Ralph James M. Bullowa as Secretary and

[1] U. S. Counter-case, Appendix, page 234.

Treasurer of the Manss Steamship Corporation, whereas the first assignment now before the Tribunal was signed by J. B. Simpson as President of the Manss Steamship Corporation.[1]

Two Assignments From Manss and Two Assignments to the Evensens.

Not only were there two assignments from the Manss Steamship Corporation but there were two assignments to the Evensens, according to the Norwegian Case and to the first formal presentation of this claim in 1919. The Norwegian Case shows an assignment dated October 2, 1917, from Jens Bing to E. & N. Chr. Evensen.[2] This is in addition to the assignment from the Manss Company of November 8th already referred to. The Evensen statement of 1919 shows that there must have been still another assignment characterized by Evensen as the "equitable assignment" of September 14, 1917. The statement sworn to by Nils Christian Evensen says:

"Delivery of Formal Assignment to Claimants. On November 5, 1917, Brown Bros. & Co. wrote Chr. Hannevig (Inc.) 139 Broadway, New York City, that they had received a letter from Andresen's Bank, dated October 2, 1917, advising them that Hannevig Inc. would deliver the said contract to them and asking for the contract. On November 9, 1917, Ralph James M. Bullowa, an attorney, of No. 32 Broadway, New York City, acknowledged the said letter of Brown Bros., and delivered to them the original New Jersey Shipbuilding Co. Contract No. 4 (204) with an assignment of said contract from the Manss S. S. Corporation to said E. & N. Chr. Evensen, dated November 8, 1917. This formal assignment was pursuant to the equitable assignment effected by the transaction of September 14, 1917. A copy of said assignment is submitted herewith as Exhibit 2. There have been no further assignments of the contract."[3]

Norwegian Ownership Represented to the Evensens.

According to the Evensen statement of 1919, it was represented that the contract was Norwegian owned and had not been requisitioned by the United States Shipping Board. It is suggested that possibly one of Hannevig's motives in attempting to show that there was a sale to Bing was to have it appear that the contract was owned by Norwegians. The Evensen statement said:

"Norwegian Ownership. On September 14, 1917, when the sale of the contract was made as above stated to the said firm, it was represented to them by the said Chr. Hannevig Aktieselskabet that

[1] U. S. Counter-case, Appendix, pages 237–238.
[2] Norwegian Case, Documentary Evidence, page 300.
[3] U. S. Counter-case, Appendix, page 234.

the said contract was Norwegian owned, to wit, owned by said Jens Bing, and had not been requisitioned by the United States Shipping Board."[1]

Evensens' Suit Against Bing.

The Norwegian Case has not disclosed anything concerning the litigation relative to the sale to Evensen. However the United States is able to present some evidence concerning this litigation. The Evensen statement of 1919 contains the following:

"Litigation Over Contract.—Early in the year 1918, the firm of E. & N. Chr. Evensen received information from which it erroneously appeared that the said contract here in question had been requisitioned by the United States Shipping Board on August 3, 1917, and accordingly they brought an action against the said Jens Bing in the courts of Norway upon the theory that Bing had sold a contract which he did not own but which had been requisitioned by the United States Shipping Board. In this action Bing answered that the said contract had not been requisitioned by the United States Shipping Board until after the sale of the same by him to the said E. & N. Chr. Evensen. The telegram and letter from the United States Shipping Board, dated October 19, 1917, submitted herewith, indicates that the contract in question was not in fact requistioned until after the sale of the contract to E. & N. Chr. Evensen, on September 14, 1917. The said action against Bing was thus apparently unfounded."[2]

Particular attention is called to the last sentence in the above quotation. The statement that the action against Bing was apparently unfounded was evidently a statement made by Mr. Evensen for the particular purpose of the claim before the Shipping Board. The court record of Norway might indicate that Evensen did not regard his action against Bing as unfounded. It is submitted that Norway owes this honorable Tribunal a full disclosure of the record of this litigation.

Large Discrepancies Unexplained.

Nils Christian Evensen in his affidavit of May 13, 1919 swore that the contract for Hull No. 204 was sold to him and E. Evensen at a price of $255 per d. w. t. This for a 5,000 ton vessel would make a total price of $1,275,000.[3]

As will appear from what follows this price is $225,000 more than the price at which Christoffer Hannevig stated on August 27, 1919, the contract had been sold to E. & N. Chr. Evensen. Up to this time

[1] U. S. Counter-case, Appendix, page 235.
[2] U. S. Counter-case, Appendix, page 236.
[3] U. S. Counter-case, Appendix, page 234.

the Norwegian Agent has presented nothing to explain this great discrepancy.

On August 25, 1919, Commissioner H. M. Robinson, of the U. S. Shipping Board, wrote to the Pusey & Jones Company, as follows:

"Gentlemen: You are requested to furnish us with a statement showing:

(a) The dates that various original contracts were made covering the 45 ships requisitioned in the various Pusey & Jones yards; also the parties thereto; also cash payments to the yard up to dates of requisition.

(b) The dates when said contracts were assigned by the original holder; and any subsequent assignments of which you can give full information.

(c) The name of the assignee and any subsequent information which you can give.

(d) The price at which contract was assigned.

(e) If the Bulk and Manss Oil Companies, Christoffer Hannevig, and Christoffer Hannevig, Inc., have any claims in relation to any of these ships, these claims should be presented.

(f) Date of requisition notice covering each of the vessels."[2]

Christoffer Hannevig personally replied on behalf of Pusey & Jones. His letter dated August 27, 1919 is printed in the U. S. Case, Appendix. The first paragraph was as follows:

"Replying to your letter of August 26 I beg to say that the answers to queries (a), (b), (c) and (d) are given on the attached schedule marked Exhibit 1."[3]

That part of Exhibit I which relates to the nine Pusey & Jones vessels involved in the Christiania claims, is printed in the U. S. Counter-case, Appendix, at page 31. In characteristic Hannevig fashion, it dodged the questions which Hannevig said it answered. It did give the former owner's progress payments to the yard, but did not give the following information in every case.

(a) Dates when contracts were assigned by the original owner.

(b) Name of assignee.

(c) Prices at which contracts were assigned.

Instead of giving the original assignments by owners it gave data concerning the last known assignees and the prices allegedly paid by these assignees.

For hull 204, Exhibit I showed the last assignment as of *November 8, 1917, to E. & N. Chr. Evensen and the price as $1,050,000.*[1]

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[1] U. S. Counter-case, Appendix, page 31.
[2] U. S. Counter-case, Appendix, page 30.
[3] U. S. Case, Appendix, page 336.

This statement of price as submitted by Hannevig is $225,000 less than the price Evensen says he paid. It seems strange that Hannevig should have made such a mistake for his firm Christoffer Hannevig A/S receipted for Evensen's money and certified that Evensen paid at a rate of $255 per ton which would be $1,275,000.[2]

Also, according to Andresen's Bank, the money went to Christoffer Hannevig.

This discrepancy of $225,000 requires explanation.

Foresight Justified.

Mr. N. Chr. Evensen has a signed statement printed in the Norwegian Case in which he shows that he had an interest in two ships, the "*Victoria II*" and the "*Laila*," both of which were torpedoed during the war. The Victoria II was torpedoed on the 6th of July, 1917 off Ushant, and the Laila was torpedoed off the Clyde (Scotland) on the 12th October 1918. The documentary evidence submitted by the Kingdom of Norway contains the translation of the maritim investigation of the loss of the S. S. Laila. This shows that the Laila was lost on October 2nd as a result of an explosion which was presumably due to a torpedo from a German submarine about 12 miles West to North of Hull off Galloway.

After showing that the "*Victoria II*" and "*Laila*" had been lost Mr. Evensen says:

"As shown above, the companies managed by ourselves, had been exposed to getting their biggest steamer torpedoed in July 1917. The wholesale torpedoing of ships caused one to reckon with at any time getting the tonnage of the companies further reduced, which according to above statement did occur."[1]

From this it appears that Mr. Evensen cites the loss of the Laila as justifying his foresight in purchasing the control for hull 204. Mr. Evensen continues his statement:

"We closely followed the offers for newbuilding contracts for fairly prompt tonnage, that were to be found on the market, but as more than $300 per ton d. w. was asked for such tonnage, we decided to purchase above named newbuilding contract (New Jersey No. 4) although it was for somewhat later delivery as we found the price reasonable. According to usual practice, the contract was purchased by the managers for above named companies for later transfer to

[1] Norwegian Case, page 244.
[2] Norwegian Case, Documentary Evidence, pages 300–301.

either of our companies, that might sustain loss. The requisition for title later on caused us to remain owners of the contract as a private company financed by our bank."[2]

From the foregoing it will be seen that Mr. Evensen, we hope as a matter of conviction, did not do as some of the other claimants, but after he became convinced that the title was irretrievably lost he kept the contract rather than unload upon the public through the sale of stock in some "new starting" corporation. Mr. Evensen states further:

"As experienced ship-managers and brokers we, however, harboured no fear that this step from the side of the U. S. Government would make the investment of our money in this contract a risky proposition. * * * Although negotiations were going on between the Norwegian shipowners' representatives and the American Government as to how those in America for Norwegian account contracted newbuildings were to be treated, and although we had not yet been informed by our representatives of any final result of these negotiations, we did not expect it possible that the American Government ultimately would requisition the ships for title. Reports procured from American as well as Norwegian newspapers confirmed our belief that America had no other intention but to procure control over the necessary tonnage for its war purposes, and not that they would make use of the situation to secure a merchant marine for use after the war by depriving us of our ships. * * * In the face of what is stated above, it was very surprising to us, that, already a short time after the purchase had taken place, a telegram was received from the Norwegian representatives in Washington to the effect that Shipping Board had decided to requisition the Norwegian ships and newbuilding contracts for title. It is self-evident, that neither we nor our bank would have taken such a big risk as to pay out an amount value $487,500, if we had had any idea, that the United States had or would come to such a drastic attitude as they did."[1]

Mr. Evensen bought this contract on October 2, 1917, according to the assignment printed in the Norwegian Case, Documentary Evidence. His manifestation of surprise that the ships had been requisitioned for title is to be contrasted with the language of the Christiania Court in its judgment rendered in the case of B. Stolt-Nielsen vs. Bjorn Bjornstad & Co., the court said:

"As the plaintiff admitted this (Cf. his statement in this regard on page 7 of his argument), I cannot see but that he must have been fully aware on September 20, 1917, that the requisition of August 3, 1917, was a requisition or seizure for possession (ownership) or would be upheld as such. The Norwegian representatives in America worked to have the requisition not be for possession, but according

[1] Norwegian Case, page 245.
[2] Norwegian Case, pages 244–245.

to the telegram in the Navigation Journal of August 17, 1917, the prospects for this do not seem to have been very bright. * * * In spite of this, the plaintiff bought the contract. In so doing, he assumed the risks and chances. The chances consisted in the fact that the United States might possibly agree to allow the seizure to remain for use only, or to allow the owners of the contract to obtain the ships after the war. *There was also the chance that the indemnity might be high. In this connection the defendant states in document 8, page 3–4: 'The hope was entertained at that time that an indemnity for the expropriation might be obtained from America to an amount as high as 1,100 crowns per ton for a contract with so favorable a delivery date as the new-ship contract in question. It was therefore a risky but not an unreasonable business.'*"[2]

The Christiania Court referred more than once to the report in the Navigation Journal under date of August 17, 1917,[1] and the court made it clear that as early as that date the newspaper reports as well as the official telegram from Mr. Meling of the Nansen commission indicated that the ships had been requisitioned for possession. The statement of the court does not agree at all with Mr. Evensen's statements about the information received from the Nansen commission and from the newspapers. It would appear from the evidence that Mr. Evensen engaged in a speculation which the Supreme Court of Norway has described as "a purchase of a chance."

The United States respectfully submits that it should not be called upon to make good the losses of Mr. Evensen and his associates in a speculation of this kind. It prays that the judgment of the Tribunal should limit the award of just compensation on claim No. 15 to $22,260.

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[1] For what is apparently the newspaper article referred to see United States Counter-case, Appendix, page 322.

[2] U. S. Counter-case, Appendix, page 387. Italics ours.

G. JUST COMPENSATION.

The Fifth amendment to the constitution of the United States provides:

"Nor shall private property be taken for public use, without just compensation."

The phrase "just compensation" as used in this amendment has been the subject of frequent construction by the courts of the United States. In accordance with these decisions, which, under the "principles of law and equity," are a part of the law of this case, just compensation is measured by the fair actual value of the property taken at the time and place where it was taken in view of all the surrounding circumstances.

The Property Taken.

It has been, it is believed, amply demonstrated that the property taken at the time and place where it was taken in view of all the struction, materials, machinery and equipment therefor, and commitments for materials, machinery and equipment therefor. It has been, it is believed, amply demonstrated that the United States did not intend to take, and did not take, in fact, the contracts under which the hulls in question were being constructed. Under these circumstances it is difficult to see any basis whatsoever for the Norwegian contention that the United States is legally obligated to make compensation for these contracts which it did not take.

It is well settled that where no property is "taken", "just compensation" does not require compensation to be made for damage or injury to property caused by the exercise of governmental powers. It is equally well settled that where property is taken by the exercise of governmental powers, "just compensation" for the property taken cannot be expanded to included a recovery for consequential injury, resulting from the taking, upon other property not taken. The application of these principles by the Supreme Court of the United States can best be shown by a brief consideration of a few decisions of that court.

Transportation Co. v. Chicago, (1878) 99 U. S. 635.

In improving a street by constructing on the line thereof, a tunnel under the Chicago River, the city of Chicago deprived the plaintiffs of access to their premises both on the side of the river and on the side of the street during the prosecution of the work. In holding the city not liable for the injury thus inflicted, Mr. Justice Strong said:

"* * *acts done in the proper exercise of governmental powers, and not directly encroaching upon private property, though their consequences may impair its use, are universally held not to be a taking within the meaning of the constitutional provision. They do not entitle the owner of such property to compensation from the State or its agents, or give him any right of action. This is supported by an immense weight of authority.* Those who are curious to see the decisions will find them collected in Cooley on Constitutional Limitations, page 542 and notes." (page 642)

Gibson v. United States, (1896) 166 U. S. 269.

The United States, in the lawful exercise of its power to improve navigation on the Ohio River, constructed a dike in the river, the effect of which was to prevent the free ingress and egress of ships to and from the only available landing on plaintiff's farm. The Supreme Court held that the plaintiff had no cause of action against the United States. Mr. Chief Justice Fuller, in delivering the opinion of the court, said:

"The Fifth Amendment to the Constitution of the United States provides that private property shall not 'be taken for public use without just compensation.' Here, however, the damage of which Mrs. Gibson complained was not the result of the taking of any part of her property, whether upland or submerged, or a direct invasion thereof, *but the incidental consequence of the lawful and proper exercise* of a government power." (Page 275.)

Scranton v. Wheeler (1900) 179 U. S. 141.

The United States, in the lawful exercise of its power to improve navigation on the Ohio River, constructed a pier in front of the upland of plaintiff, in consequence of which plaintiff's land became permanently inaccessible to river craft. In denying compensation to the plaintiff, Mr. Justice Harlan took the position that there was not "a taking of private property for public use" but merely "an injury resulting incidentally from the exercise of a governmental

power for the benefit of the general public, and from which no duty arises to make or secure compensation to the riparian owner." (page 164)

United States v. Chandler-Dunbar Company (1913) 229 U. S. 53.

The United States, in accordance with an Act of Congress directing the condemnation of all property north of Ste. St. Marie Fall Ship Canal, between the canal and the international boundary as necessary for the protection of navigation "took" the riparian tract of the Chandler-Dunbar Company. The company recovered in the lower court as part of its "just compensation" $550,000 as the present money value of undeveloped water power of the rapids and falls in the river adjacent to the riparian tract taken. The Supreme Court held that inasmuch as any right to use the water power was subject to the paramount power of Congress to improve navigation, this was not an element of "just compensation" for taking the upland. In other words, compensation for taking the upland was limited to the value of that property and did not include compensation for the consequential result of the concurrent exertion of the paramount power to improve navigation.

Richards v. Washington Terminal Company (1914) 233 U. S. 546.

By authority of an Act of Congress a railroad was located near the property of the petitioner. The value of the property was thereby depreciated. At the same time the railroad "took" an easement to discharge smoke and gases over the property of the petitioner by an apparatus used to ventilate its tunnel, the outlet of which was close to petitioner's property. It was held that "just compensation" must be made for the easement thus taken, but that such compensation did not include any depreciation in the value of the property of the petitioner resulting from the location and ordinary operation of the railroad.

Here there was a "taking" of the property of the petitioner. At the same time and concurrent with the "taking" there was an exercise of governmental power which resulted not in a "taking" but in the infliction of damage. The fact that the "taking" and "damage" occurred at the same time did not entitle the claimant to recover such damage as an element of just compensation for the property actually taken.

Sharp v. United States (1903) 191 U. S. 341.

In this case the Supreme Court held that just compensation for taking one tract of land does not include the consequential injury caused by that taking to another and different tract of land of the same owner, no part of which is taken.

Similarly the loss of executory contracts in relation to property taken is not an element of just compensation for the property taken. As stated by Nichols in his work on Eminent Domain,

"The taking of the land terminates all contracts in respect to its use and the owner is under no liability for his failure to carry out such agreements, but it is well settled that he is not entitled to compensation for the loss of his contract. * * *.

"All contracts for the use of land are entered into in view of the possible taking of the land for public use, and the sovereign power of eminent domain cannot be impaired by contracts of private parties."[1]

Attention is also invited to *Cornell & Andrews Smelting Company v. Boston & P. R. Corporation*, (1911), 209 Mass. 298, 95 N. E. 887, in which it was held in determining "just compensation" due the lessees for a leasehold which had been taken, that consideration could not be given to an option contract which the lessees had for the purchase of the property. Similarly in *Ogden v. Pennsylvania Railway Company*, (1911), 229 Pa. 378, 78 Atl. 929, it was held in a proceeding for the assessment of damages occasioned by the appropriation by a railroad company of a narrow strip of land included within the limits of a lot of ground containing one and one half acres belonging to the plaintiff that it could not be shown that the plaintiff had divided the land into building lots and had contracted to lease some of these lots.

Likewise it has been held that contracts between the owners of different interests in land taken cannot affect the right of the government to take the land for the public use, or oblige it to pay by way of compensation more than the entire value of the land as a whole. *Burt v. Merchants Insurance Co. (1874) 115 Mass. 1 at 15.*

As stated in *Edmands v. Boston* (1871) 108 Mass. 535 at 544:

"The public right is exercised upon the land itself, without regard to sub-divisions of interest by which the subject is affected through the various contracts of individual owners. The public cannot forego

[1] Nichols on Eminent Domain, 2nd Edition, Vol. I, pages 700–701.

its right to take property for public uses because the exercise of that right will defeat private contracts; nor is it reasonable that losses arising from the failure of such contracts, which otherwise might furnish grounds of damage between individual parties, should measure the compensation to be rendered for the property so taken."

These cases, it is believed, establish beyond question that consequential injury to property not taken, whether such property be contracts or other property, is not an element of value in the property actually taken, and cannot therefore be included in the "just compensation" to be paid for the property taken.

In the present case the property taken consisted of certain unfinished hulls and materials therefor. These hulls and materials were taken by the lawful exercise of governmental power. The contracts to complete these hulls were in no sense of the word an inherent part of the unfinished hulls and materials therefor. They were a different and distinct species of property. Clearly if an unfinished hull had been seized on execution and sold to pay a valid judgment against the foreign claimant, it would not be contended that the obligation of the builder to complete the hull would pass to the execution purchaser, or that such purchaser could successfully assert any rights thereunder against the builder. This proves conclusively that the contract must be a unit of property separate and distinct from the unfinished hull.

In *Transportation Company* v. *Chicago*, the claimant's property, though not taken, was rendered inaccessible in consequence of the improvement of a street by the city; yet he was not compensated. In *Gibson* v. *U. S.*, and in *Scranton* v. *Wheeler*, the property of the claimants, though not taken, was rendered inaccessible to river navigation; yet they were not compensated. In *U. S.* v. *Chandler-Dunbar Company*, claimant, in consequence of the taking of his riparian tract, coupled with the concurrent exercise of governmental power to improve navigation, lost the rights to undeveloped water power in a stream; yet he was not compensated for this loss. In *Richards* v. *Washington Terminal Company*, the claimant's property, though not taken, was depreciated in value by the building of a railroad; this took place concurrently with the "taking" of an easement from the claimant; yet claimant was not compensated for the depreciation to his property resulting from the operation of the railroad. In *Sharp* v. *U. S.* claimant's property, though not taken, was injured in consequence of the taking of another piece of property of claim-

ant; yet he was not compensated for the injury to the property not taken. In *Cornell & Andrews Smelting Co.* v. *Boston & P. R. Corporation*, and in *Ogden* v. *Pennsylvania Railway Co.*, claimant's contracts, though not taken, were lost in consequence of the taking of the land to which they related; yet they were not compensated for the loss of these contracts. Why then should the government of the United States in the pending case be required to include in the "just compensation" for the unfinished hulls and materials which it took, compensation for the contracts for the completion of these hulls which it did not take? This, it is believed, is a legitimate question to submit to the representatives of Norway.

Captain Hanssen, in his brief of November 5, 1919,[1] cites the case of *Monongahela Navigation Company v. U. S.* (1892) (148 U. S. 312) as disposing "of the suggestion that the Government could take the ship and not pay for the value of the contract under which it was being constructed." An examination of this case fails to disclose that it has any such effect. The facts are these: The Monongahela Navigation Company was incorporated by the State of Pennsylvania and received a franchise which authorized it to improve the navigation of the Monongahela River by erecting locks and dams and to take toll for their use by vessels passing through them. "At the instance and implied invitation of Congress" the company constructed lock and dam No. 7. The United States subsequently condemned this lock and dam under a statute which expressly provided that in estimating its value the franchise to take tolls for its use should not be considered. The trial court, in obedience to the statute, excluded evidence concerning the franchise. This ruling was reversed by the Supreme Court of the United States, which decided (a) that Congress had no power to prescribe what elements should be considered in fixing "just compensation" for property taken, and (b) that in fixing "just compensation" for the taking of the lock and dam a present franchise right to take tolls for the use of the lock and dam enters into the value of the property actually taken and must be considered in determining that value.

At the outset it should be noted that the lock and dam were built "at the instance and implied invitation of congress" for the improvement of navigation in the Monongahela River, and were subsequently appropriated to that use by the United States, instead of

[1] U. S. Counter-case, Appendix, page 246 at 254.

being simply removed in the exercise of the paramount power to improve navigation. This being so, it would seem that the decision may properly be based upon estoppel. This is expressly pointed out in the Case itself (page 324, 334). Two subsequent decisions of the Supreme Court assert that estoppel is the basis of the decision. (See *Lewis Bluepoint Oyster Company v. Briggs*, (1912) 229 U. S. 82 at 89; and *Greenleaf Johnson Lumber Company v. Garrison*, (1914) 237 U. S. 251, 264.)

But in any event it is clear that the case in no wise sustains a recovery in the present case with respect to the contracts to complete the unfinished hulls requisitioned. Clearly a decision that a present and vested franchise to take tolls in respect of an existing lock and dam fully constructed and in present operation enters into the present value of that lock and dam and must be considered in fixing "just compensation" for taking it by no means decides that an executory contract to complete a vessel or an unfinished hull and materials pertaining thereto must be considered in fixing just compensation for taking such hull and materials. A present franchise to take tolls in respect to the use of an existing lock and dam differs radically from an executory contract to build it. In the one case there is an existing right to receive compensation for the use of the property, while in the other case there is simply an executory agreement to create property in the future for a consideration. In fact it is inconceivable that a franchise to collect tolls in the future when and after a given lock and dam under construction should be completed would be an element to be taken into account in fixing just compensation for the condemnation of the unfinished lock and dam. That question was neither raised nor considered in the *Monongahela* case. Still less did it decide that in fixing compensation for taking an unfinished lock and dam the obligation of the contractor to complete it for the Navigation Company enters into the value of the uncompleted structure condemned, in a case where the benefit of that obligation was not appropriated by the United States, which, we will assume, proceeds to have the structure finished for its own account subsequent to the exercise of its power of requisition.

In fixing the value of property, earning power is an important element. As is well stated by Mr. Justice Brewer in the *Monongahela* case, "the value of property, generally speaking, is determined

by its productiveness—the profits which its use brings to the owner. Various elements enter into this matter of value."[1] In the *Monongahela* case the government took a going concern. The lock and dam, together with the existing franchise to take tolls with respect to its use constituted a business, all of which was taken. In determining "just compensation" for this going concern which was appropriated by the government it was necessary to consider earning power, which in turn required a consideration of the value of the franchise to receive tolls as well as the value of the lock and dam itself. In the present case no such elements are involved. The unfinished hull and the contract to complete it are obviously not a going concern. The unfinished hull has no earning power. The idea which Mr. Justice Brewer had in mind in the *Monongahela* case is totally inapplicable to the instant case.

Finally, it may be observed that all the decisions of the Supreme Court of the United States heretofore cited in this discussion, with the exception of *Transportation Company* v. *Chicago*, were decided subsequent to 1892, the year of the decision of the *Monongahela* case. Under these circumstances it can not be seriously contended that the case has in any manner altered the principle deduced from these decisions. The case, therefore, in no wise establishes any right to recovery as an element of "just compensation" for the unfinished hulls and materials therefor, which were requisitioned, compensation for the contracts to complete those hulls, which were not requisitioned.

Nor can it be contended, as apparently suggested in the conclusion of the Norwegian case,[2] that the United States is liable for the loss of these contracts by virtue of the provisions of the Emergency Shipping Fund Provision of the Urgent Deficiencies Act of June 15, 1917, which authorizes and empowers the President, "*within the limits of the amounts herein authorized* . . . . . to *modify*, *suspend*, *cancel* or *requisition* any existing or future contract," and which also provides that "whenever the United States shall *cancel*, *modify*, *suspend* or *requisition* any contract . . . . . it shall make just compensation therefor."[3]

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[1] *Monongahela Case*, 148 U. S. 312 at 328.
[2] Norwegian Case, page 126.
[3] U. S. Case, Appendix, pages 88–89.

The requisition order of August 3, 1917, states that "all * * * ships * * * under construction in your yard, and certain materials, machinery, equipment, outfit, and commitments for materials, machinery, equipment, and outfit necessary for their completion are hereby requisitioned by the United States."

It has already been shown that this order did not in terms requisition any contracts for the construction of ships. Surely it cannot by any stretch of the imagination be contended that the order in terms purported to "modify" "suspend" or "cancel" any contracts. Clearly an assertion of authority to modify a contract requires both a sufficient designation of the contract to be modified as well as express and precise provisions concerning the extent of the modification. Similarly, an assertion of authority to "suspend" a contract would require not only that the given contract be sufficiently designated, but also that something be said relative to the time of suspension. And again the exercise of authority to "cancel" a contract must of necessity state in terms what contract or contracts are thus to be cancelled. A mere inspection of the order of August 3, 1917, discloses a total lack of any such provisions, not merely with respect to contracts for the construction of vessels, but with respect to any contracts whatsoever.

Equally impossible is the contention that if contracts for the construction of vessels were defeated or destroyed as a consequence of the requisition order of August 3, 1917, they were to that extent modified, suspended, or cancelled within the meaning of Section (b) of the Emergency Shipping Fund Provision. In other words, recovery for the contracts cannot be claimed on the theory that the requisitioning of the unfinished hulls and materials therefor consequentially operated "to modify, suspend, cancel, or requisition" the contracts for their construction. The Act, fairly construed, imposes no liability for such consequential results. It is confined to the direct exertion of the powers enumerated.

By the terms of the Emergency Shipping Fund Provision the President is authorized and empowered "*within the limits of the amounts herein authorized*" to do the following things:

"(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are

of the nature, kind and quantity usually produced or capable of being produced by such person.

"(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material.

"(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

"(d) To requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

"(e) To purchase, requisition, or take over the title to, or the possession of, for use or operation by the United States any ship now constructed or in the process of construction or hereafter constructed, or any part thereof, or charter of such ship."[1]

It will thus be seen that there are five separate and distinct grants of authority. This clearly indicates an intention that each authority thus granted may be independently exercised. But this intention to permit the President to select a particular authority which he would directly exercise, and to determine the extent to which he would directly exercise it, would plainly be defeated if he could not determine either what powers he was exercising or the property on which they were being exercised until all the approximate consequences of the action taken should be ultimately established by proof. To put the matter concretely it cannot have been the intention of Congress to make a direct and intentional requisition of a plant under Section (d) a consequential and unconscious exertion of the authority conferred by Section (b) to modify or suspend or cancel contracts simply because the proof might later establish that various contracts were thereby consequentially affected.

A different construction would obviously make it difficult, if not, as a practical matter, impossible for the President to determine whether the action he might propose to take was "within the limits of the amounts herein authorized" as expressly required by the terms of the Act. It would be impossible to determine within limits the probable compensation for directly taking a ship or plant or a contract as the case might be. It is the duty of the President to determine beforehand whether the amount in question would be within the limits of the appropriation. This duty he plainly could not discharge if recovery, instead of being confined to "just compensation"

[1] U. S. Case, Appendix, page 88.

for the property actually taken, were held to include payment to everyone who suffered consequential injury to his property or contracts by reason of the taking. Congress certainly did not intend to limit the amount which might be spent under the Act and then impose a consequential liability for the action taken thereunder which might spread indefinitely like the ripple from a stone dropped into still water. Such a construction would defeat the operation of the statute.

Furthermore recovery for the acts enumerated is confined to "just compensation." The phrase "just compensation" is evidently taken from the Fifth amendment to the Constitution of the United States. As used in that amendment it has been frequently construed by the Supreme Court. The presumption therefore is that it was used in the same sense in which the Supreme Court has construed it. It has been seen that under the decisions construing the Fifth amendment it is well settled that where property is taken by the exercise of governmental powers "just compensation" for that property cannot be expanded to include a recovery for consequential injury, resulting from the taking, upon other property not taken. It is therefore clear that in the absence of language in the statute to the contrary, it would follow that in so far as the performance of executory contracts for the construction of vessels might be consequentially affected in consequence of the requisition order of August 3, 1917, no right to recover against the United States accrues under the Emergency Shipping Fund Provision.

It is thus apparent that any such construction of the Emergency Shipping Fund Provision would not only add by construction something which Congress had not seen fit to include and which under the Fifth amendment it was not required to include, but would also tend to defeat express provisions of the Act.

In the conclusion of the Norwegian Case is stated that,

> "If these contracts were not cancelled, nor modified, nor suspended nor requisitioned by the United States, their former owners have a right to ask, what then did happen to them."[1]

While the United States does not consider that an exact determination of the precise fate of these contracts, which it did not take and for which it is under no legal obligation to make compensation, is involved in the present arbitration, it nevertheless deems it not in-

[1] Norwegian Case, page 126.

appropriate to attempt to satisfy the curiosity of the former owners of these contracts, as thus manifested in the Norwegian Case, by referring to that branch of the law of contracts which deals with impossibility of performance and the frustration of contracts in consequence thereof. It is a well established principle of contract law, as stated by Anson, that

"Impossibility arising from a change in the law of our own country or from the lawful act of the executive exonerates the promissor."[1]

The following passage from Williston on Contracts is also of interest:

"* * * It may be said broadly that where the law forbids or prevents the performance of a promise, legal when made, the promissor is freed from liability. * * * Under the statutes passed since 1914 because of the war a number of cases of this sort have arisen. Charter parties, contracts to sell or manufacture goods where the goods or all goods manufactured at the seller's factory are afterwards requisitioned by the government, and contracts of other kinds. have been invalidated by statute or executive orders because of the exigencies of war, and the promissors held free from liability for not keeping their contracts."[2]

A recent English case, *In re Shipton and Harrison Arbitration*, (1915) 3 K. B. 676, furnishes a close parallel to the case under discussion. In this case Shipton, Anderson & Co. sold to Harrison Brothers & Co. a quantity of specific wheat lying in a Liverpool warehouse. Before the delivery of the wheat it was requisitioned by the British Government. It was held that the vendor was discharged from his obligation to deliver the wheat owing to the action of the British Government in requisitioning it. In his opinion Lord Reading said:

"I have come to the conclusion that in this case the sellers are excused from the performance of the contract, and that the contract must be taken as an undertaking by the sellers to deliver the goods subject always to this condition, that if the government requisitions the goods and render it impossible by their act for the sellers to perform their contract they should be excused from performance."

In this case the contract involved the delivery of specific wheat. The decision of Lord Reading is placed upon that ground. In the pending case the contracts were for the construction of ships to be made of materials to be purchased. Presumably the materials were not specific. Nevertheless there is no difficulty in bringing the case

[1] Anson on Contracts, 14th English Edition, page 433.
[2] Williston on Contracts, Vol. III, pages 3293–4.

squarely within the principle of the English decision. Under the actual conditions obtaining in consequence of the mobilization of the industries of the United States for the prosecution of the war, it would have been utterly impossible for the builders to obtain the necessary steel to complete any ships for foreign account, because of the imperative demand for steel for war purposes. It would, therefore, seem clear that as a consequence of the requisition order of August 3, 1917, the obligations of the builders to complete the ships were destroyed and that the contracts were in consequence frustrated.

The English decision referred to above is only one of a number of decisions of a similar character which have come before the British and American courts as a result of the abnormal situation created by the war.

That the former owners of these contracts should be so completely at sea concerning what happened to the contracts as a result of the requisition order of August 3, 1917, is somewhat surprising in view of certain statements made in the decision rendered by the Supreme Court of Norway in the case of the *Bestum II*. Mr. Lie, Assessor Extraordinary, in his opinion, after discussing what took place in the summer of 1917 concludes with this statement: "After what thus happened it is evident that the disputed new building contract must be considered as annulled between the counter appellant and the works."[1] On the following page the Judge remarks: "It is clear in my opinion that he (the counter appellant) must have had full knowledge that, if the decree was carried out to the extent allowed to the President of the United States and through him to the Shipping Board, it would deprive the holders of the new building contracts concerned of all claims for delivery according to contract."[2] These two passages from the decision of the Supreme Court of Norway in the case of the *Bestum II* clearly indicate that the doctrine of the frustration of contracts is not an entirely unknown phenomenon in Norway.

In conclusion the United States respectfully reiterates that the property taken consisted of hulls in process of construction and materials, machinery and equipment therefor—"a mere congeries of wood and iron." The United States did not take, in fact, the contracts under which the unfinished hulls were being constructed. The

[1] U. S. Counter-case, Appendix, page 400.
[2] U. S. Counter-case, Appendix, page 401.

United States is under no legal duty to make compensation for these contracts for the construction of the unfinished hulls, which it did not take. It is simply obligated to pay for the property actually taken i. e. the congeries of wood and iron.

Circumstances Surrounding the Taking.

"Just compensation" for the property taken is to be determined by the value of the property in its condition at the time of the taking in view of all the surrounding circumstances which then exist, and not upon its hypothetical or even actual value at some past or future time. All private uses for which the property was presently available at the time of the taking are to be considered in determining its value. But consideration is not to be given to the enhancement of value resulting from the taking or by reason of the use to which the property is subsequently put. As stated by Mr. Justice Lurton in *U. S. v. Chandler-Dunbar Company*, supra, "the value should be fixed as of the date of the proceedings and with reference to the loss the owner sustains, considering the property in its condition and situation at the time it is taken and not as enhanced by the purpose for which it was taken." (229 U. S. 53 at 76.) See also the following statement by Mr. Justice Field in *Boom Co. v. Patterson*, (1878) 98 U. S. 403, 408:

"So many and varied are the circumstances to be taken into account in determining the value of property condemned for public purposes, that it is perhaps impossible to formulate a rule to govern its appraisement in all cases. Exceptional circumstances will modify the most carefully guarded rule; but, as a general thing, we should say that the compensation to the owner is to be estimated by reference to the uses for which the property is suitable, having regard to the existing business or wants of the community, or such as may be reasonably expected in the immediate future."

The compensation must be just "not merely to the individual whose property is taken, *but to the public which is to pay for it.*" (*Searl v. School District*, (1889) 133 U. S. 553 at 562. Italics ours.)[1]

The effective date of requisition of this "congeries of wood and iron" taken by the United States was August 3, 1917. This has already been discussed on pages 113 to 143 *supra*. The value is to

[1] That value must be determined as of the time of the taking. See also *U. S. v. Gill* (1874) 20 Wall. 517 and *Great Falls Mfg. Co. v. Attorney General* (1887) 124 U. S. 581, 595.

be fixed as of that time. The next question is, for what use, if any, was this "congeries of wood and iron" available in private hands on August 3, 1917? When on June 15, 1917, the Emergency Shipping Fund Provision of the Urgent Deficiencies Appropriation Act was approved by the President, he thereby received authority to control the production of ships and ship materials throughout the United States. The authority thus conferred enabled him to stop all building for private account, if in his opinion the public welfare required, whether any vessels then building were requisitioned or not. This authority he delegated to the Shipping Board and Fleet Corporation on July 11, 1917, which on August 3, 1917, assumed actual control of the production of ships and ship materials and thereby stopped further building for private account. Had the unfinished ships not been requisitioned at the same time they would simply have been pushed aside to make way for government work. They were too bulky to move. They could not have been finished for lack of facilities. Neither could they have been completed until after the close of the war except for Governmental account, because of the imperative demand for steel for war purposes.[1] They could not under such circumstances have been sold except at ruinous loss. The government was the one possible purchaser and had it so desired it could practically have named the price. If that price were refused the hull was left on the owner's hands to depreciate for an indefinite period. All these circumstances are clearly competent in determining "just compensation" for this "congeries of wood and iron" at the time when it was requisitioned.

Perhaps it will be argued that when the United States requisitioned the unfinished hull it requisitioned a potential ship and should pay therefor the market price for ships, less the reasonable cost of completing the given vessel. But an unfinished ship is not a ship until it is launched. Until then it is, as stated in *Tucker* v. *Alexandroff*, 183 U. S. 424, 438, "a mere congeries of wood and iron." To treat the "congeries of wood and iron," as a potential ship would give to them an element of value which they would not possess until the contract to complete them was performed in the future. In view of the fact that the United States did not take these contracts and

[1] See U. S. Case, pages 66–71.

that their loss is not an element of just compensation for "taking" unfinished hulls and materials, the contract cannot be treated as performed, although in fact not performed, in order to add an element of value which the congeries of materials did not possess at the time of the taking. "Just compensation" for taking a quart of acorns cannot be based upon their potential and prospective value as timber.

Nor is this argument strengthened by urging that the government itself subsequently proceeded to complete the vessels. The Government alone could complete the vessels. They could not and would not have been completed for private account had they been left in private hands. All that the private claimant lost by the "taking" was a "congeries of materials" which could not be turned into a vessel so long as it remained his property. As stated by Mr. Justice Lurton in the *Chandler-Dunbar* case, supra, the property taken is to be considered "in its condition and situation at the time it is taken and not as enhanced by the purpose for which it was taken." In the *Chandler-Dunbar* case the court also had occasion to hold that there could be no recovery to the owner of a condemned island for its "strategic value" based on its possible worth to the government in connection with any general scheme of water development in the river. In this connection the court said:

"But in a condemnation proceeding, the value of the property to the government for its particular use is not a criterion. The owner must be compensated for what is taken from him, but that is done when he is paid its fair market value for all available uses and purposes." (pp. 80–81.)

In view of the fact that the "congeries of material" was not at the time of the taking available for any private use and probably had no market value in private hands since it could not be completed into a vessel for private ownership, it is clear that the owner cannot recover compensation based upon their value as a potential vessel simply because the government could and did complete the vessels subsequent to the taking.

In connection with the unfinished hulls taken from the "Hannevig" companies, another consideration is also of controlling importance in determining the "just compensation" to be awarded. It has been shown that these companies were financially unable, under the actual conditions obtaining, to build the hulls under con-

struction in the yards of the Pusey & Jones Company and the New Jersey Shipbuilding Company, and could not have completed these ships even if they had not been requisitioned. This is discussed in the Case of the United States, pages 71–74.[1] This circumstance is, it is submitted entitled to great weight in awarding "just compensation" in the cases of claims 7 to 15 inclusive.

Section 3477 of the Revised Statutes of the United States.

The United States also invokes Section 3477 of the Revised Statutes of the United States against any attempt to increase its liability by assignments or attempted assignments of contracts or claims after the date of requisitioning, August 3, 1917. This section reads as follows:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

This statute, as has already been pointed out in the discussion of "the terms of submission" is, in accordance with the "principles of law and equity," a part of the law of this case.

In this connection it is of interest to note that the courts of Norway have given effect to this statute. The following language from the judgment of the Town Court in the case of J. Ringen, Inc. against the Bestum II Steamship Company is of particular interest:

"According to the foregoing it must be assumed that every obligation devolving upon the Chester Shipbuilding Company under the new-ship contract in question disappears in view of the above mentioned requisition order of August 3, 1917, and that the only thing that remained of the contract was a claim for indemnity against the American Government in favor of the person to whom the shipyard had obligated itself by means of the contract, or else the successors of that person. But it is further explained that the American law provides that the transfer of such a claim for indemnity from the

[1] See also *supra*, page 239 *et seq.*

person who was the owner of the contract at the time of requisition is null and void without the consent of the proper American authorities. Inasmuch as this consent was not obtained, the defendant to whom the contract was assigned on Sept. 13, 1917, really never had any valid claim under the contract and could consequently likewise not transfer or assign any claim to the plaintiff."[1]

Assignment Clauses of Contracts For Construction of Hulls Nos. 95 and 92.

Moreover the United States invokes the noncompliance with the provisions of the contracts for the construction of hulls Nos. 95 and 92 rendering assignments by the purchaser invalid without the written consent of the builders, against any attempt to increase its liability by assignments or attempted assignments of these contracts or claims arising therefrom, subsequent to August 3, 1917, the date of the requisition order.

Article 7 of the contract between the Seattle Construction & Dry Dock Company and Willy Gilbert for the construction of hull No. 95 provides that,

"No assignment of this contract by the purchaser shall be valid without the written consent of the builders."[2]

An identical provision occurs in Article 6 of the contract between the Seattle Construction & Dry Dock Company and A/S Rederiet Odfjell for the construction of hull No. 92.[3]

Each of these contracts was assigned five times.[4] In no case is it shown that the written consent of the builders was obtained.

That this clause forbidding assignments was not regarded as a mere perfunctory matter is brought out in the following correspondence between the Seattle Construction & Dry Dock Company and A/S Rederiet Odfjell relative to an attempt by the latter to modify the terms of the clause. On June 27, 1916, A/S Rederiet Odfjell made the following inquiry of the Seattle Construction & Dry Dock Company:

"There was in your contract one clause which it was our intention in this letter to ask you to rewrite before the signing of the contract. We refer to: 'No assignment of this contract by the purchaser shall be valid without the written consent of the builders.'

[1] U. S. Counter-case, Appendix, page 406.
[2] U. S. Case, Appendix, page 597 at 602.
[3] U. S. Case, Appendix, page 603 at 607.
[4] Exhibit 1 of the brief of Captain C. Frolich Hanssen, U. S. Case, Appendix, pages 670–671.

"If your idea is to protect yourselves against our selling the contract to parties unreliable or unable to fulfill remaining obligations we can very well admit of your right to do so. But that is what the clause should have said then—As it is written now we object to it. It is unusual in our experience. We ask you to change it and enter into the contract something similar to this instead: 'Should A/S Rederiet Odfjell resell this contract it is part of A/S Rederiet Odfjell's undertaking with us that said firm remain responsible to the Seattle Construction and Dry Dock Company for the proper fulfillment of all engagements as pr. this contract.'

"Further explanations of why we want this change is certainly unnecessary. You will realize that our wording offer you even more security than does your own; but on the other hand leaves to us (at no cost, inconvenience or risk to you)—a freer management of what really is our property and our affair."[1]

On August 15, 1916, the Seattle Construction & Dry Dock Company replied as follows:

"Your objections to the assignment clause have been carefully analyzed, but we regret to state that we do not see our way clear to make any alterations to said clause. There is nothing to prevent you from selling this vessel during the period of her construction, but we prefer to recognize only your good selves in this transaction."[1]

It thus appears that the A/S Rederiet Odfjell desired to restrict the prohibition upon assignments to the delegation of its duties under the contract. So far as its right to receive a ship was concerned, it desired to be able to dispose of it freely and to give the assignee rights against the Seattle Construction & Dry Dock Company. The Seattle Construction & Dry Dock Company refused to make the change suggested. It was willing to deal only with the A/S Rederiet Odfjell. To be sure it admitted that the A/S Rederiet Odfjell might sell its rights against it to a third party, but it was unwilling that these rights should be transferred in a manner which would give the third party any legal rights against itself.

It is well established that in the absence of a waiver by the builder, the non-compliance with the terms of such a provision forbidding assignments as that contained in these two contracts may be used as a defense in an action brought against the builder by an assignee who has not secured the written consent of the builders. As stated in *Bond-Foster Lumber Company* v. *Northern Pacific Railway Company*, 53 Wash. 302, 307, 101 Pacific, 877:

"One who accepts an assignment of a contract which by express terms is made non-assignable acquires only a cause of action against the assignor."

[1] U. S. Counter-case, pages 63–64.

It has likewise been held that, in the absence of a waiver by the builder, the non-compliance with the terms of such a provision may be invoked by third parties. This point was carefully considered by the Supreme Court of the United States in the case of *Burck* v. *Taylor*, (1893), 152 U. S. 634. In this case one Schnell made a contract for a new capitol building for the State of Texas, by the terms of which Schnell was to furnish all the material and do all the work, and the State, as the consideration therefor, was to convey three million acres of land. Clause 26 of the contract provided that,

"This contract shall not be assigned, in whole or in part, by the party of the second part (the contractor) without the consent, in writing, of the party of the first part, signed by the Governor of Texas and the Capitol Building Commissioners with the advice and consent of the heads of departments."

Schnell the contractor assigned an undivided three-fourths interest in this contract to Charles B. Farwell, John V. Farwell, Amos C. Babcock, and Abner Taylor, with the required consent. He then assigned three-sixteenths interest without the required consent to three other persons severally, one of whom conveyed one-thirty-second of his interest to the plaintiff. The contractor then made a third assignment of all of his rights under the contract to Taylor, Babcock & Co., and Taylor, Babcock & Co., in turn, made an assignment of the entire contract to Abner Taylor, the defendant. Both of these assignments were assented to, and all parties agreed to be bound thereby.

Taylor performed the contract, and the plaintiff brought suit against him to recover what he claimed to be his share of the profits under the assignment.

The court held that he could not recover. Concerning the lack of assent on the part of the State to the plaintiff's assignment, the court said:

"That contract, however, was as binding on the one party as the other. The contractor assented to its terms precisely as did the State, and his promise was not to assign the contract in whole or in part without the consent in writing of the state authorities. *It was a promise which entered into and became one of the terms of the contract, and one which was binding, not only upon the parties, but upon all others who sought to acquire rights in it.* It may be conceded that, primarily, it was a provision intended, although not expressed, for the benefit of the State, and to protect it from interference by other parties in the performance of the contract, to secure the constant and sole service of a contractor with whom the

State was willing to deal, and to relieve itself from the annoyance of claims springing up during or after the completion of the contract in favor of parties of whose interests in the contract it had no previous knowledge, and to the acquisition of whose interests it had not consented. Concede all this, and yet it remains true that *it was a stipulation which was one of the terms of the contract and binding upon the contractor, and equally binding upon all who dealt with him.* It is unnecessary to hold that the contractor might not be personally bound upon his promise made before the performance of the contract to transfer a portion of his profits to any third party. Whatever liabilities he might assume by such a promise, it would be an independent promise on his part, and would not let the promisee into an interest in the contract. It would give him no right to take part in the work, no right to receive anything from the State, and all that it would give him would be an independent right of action against the contractor for the failure to pay that which he had promised to pay; the contract remaining all the time the property of the contractor, subject to disposal by and with the consent of the State. To him alone the State would remain under obligations, and with him alone would the State be required to deal."

It is submitted that the reasoning of the Supreme Court of the United States in the case of *Burck* v. *Taylor* is applicable to the instant case. The terms of these contracts prohibiting assignment without the written consent of the builders were vital terms of the contracts. They were not complied with. The United States submits that the non-compliance with the provisions of these contracts for the construction of hulls Nos. 95 and 92, relative to assignments is, of itself, an answer to any attempt on the part of the Kingdom of Norway to increase its liability by assignments or attempted assignments of these contracts or claims arising therefrom subsequent to August 3, 1917, the date of the requisition order.

"Just Compensation" Does Not Include Interest.

In the tabular statement of the claims of the Christiania Group of Norwegian Shipowners printed opposite page 161 of the Norwegian Case, $4,734,377.59 is charged as interest. This sum is stated to be computed "at the rate of 7% per annum, compounded semi-annually from dates of payments to September 1, 1922, inclusive."

This claim of the Kingdom of Norway for interest at the rate of 7% per annum compounded semi-annually is wholly inconsistent with the past claims of the Christiania Group, and the theory of reimbursement contended for in the Norwegian Case.

Captain C. Frolich Hanssen, in his brief dated November 5, 1919, makes the following explanation concerning the amount of interest included in the claim:

"Actual interest paid has been included. Where claimant was using its own money interest has been computed at the rate of 5%, the legal rate in Norway."[1]

On March 12, 1920, about four months later, Captain Hanssen handed a memorandum to the Department of State entitled, "Facts in Regard to the 15 Vessels Comprised in the Christiania Group."[2]

In this memorandum interest is computed at the rate of 6% per annum. Neither the Case nor the Counter-case of the Kingdom of Norway contains any explanation whatsoever concerning these discrepancies in the rates of interest in the presentations of the claims of the Christiania Group referred to above, nor do they make any explanation relative to the legal basis for computing interest at the rate of 7% per annum compounded semi-annually.

The appendix to the Counter-case of the Kingdom of Norway contains excerpts from the statutes of Delaware, New Jersey, Wisconsin, Washington and Oregon, the states in which the hulls and materials requisitioned were being constructed, relative to the legal rate of interest in those states. In each of these states the legal rate of interest is 6% per annum. In none of them is there any authorization for compounding interest semi-annually. The relation between these interest rates as thus shown in the statutes printed in the Norwegian Counter-case, and the rate of 7% per annum compounded semi-annual is obscure. The United States awaits with interest the explanation of the Kingdom of Norway relative to this matter.

But the Norwegian claim for interest is not only irreconcilable with the theory of reimbursement contended for by the Kingdom of Norway, the past claims of the Christiania Group and the rates of interest prescribed by law in Delaware, New Jersey, Wisconsin, Washington, Oregon, and apparently Norway. It is likewise irreconcilable with Section 177 of the Judicial Code of the United States, which, in accordance with the "principles of law and equity" is a part of the law of this case. Section 177 reads as follows:

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[1] U. S. Counter-case, Appendix, page 246 at 253.
[2] U. S. Counter-case, Appendix, page 293.

"No interest shall be allowed on any claim up to the time of rendition of judgment thereon by the Court of Claims unless upon a contract expressly stipulating for the payment of interest."

The only remedy afforded by the statutes of the United States to a person dissatisfied with an award of the United States Shipping Board is an action in the Court of Claims. This arbitration is a substitute for that remedy. If an action had been brought in the Court of Claims it is clear that, under this statute, no interest could be allowed. Is it not equally clear that in a proceeding where merely another tribunal is substituted for the Court of Claims that the statute is equally applicable?

Captain Hanssen, in his brief of November 5, 1919, contends that "none of the statutes which have been supposed to forbid interest have application to an allowance for 'just compensation'". He adds that "the decisions are clear that 'just compensation' requires that interest be included", and cites in support of this contention *U. S.* v. *Sargent* 162 Fed. 81 and *U. S.* v. *Rogers*, 257 Fed. 397.[1]

The case of *U. S.* v. *North American Transportation & Trading Company* (1919) 253 U. S. 330 is a precise parallel to the instant case. The facts of this case are as follows: On July 1, 1900, General Randall, U. S. A., took possession, as a site for an army post, of a large tract of public land in Alaska, which included the placer mining claim of the petitioner. On December 8, 1900, the President, pursuant to a recommendation of the Secretary of War, issued an order by which the tract of land was reserved from sale and set aside for military purposes; on December 20, 1900, the Secretary of War announced it as a public reservation. The Government erected buildings over that portion of the land which had been the site of the company's placer mining claim. The company brought suit in the Court of Claims and sought to recover as part of its just compensation, a sum equal to interest for the occupation and use of the property from the time of the taking to the date of judgment, a period of nearly 20 years. This the Supreme Court of the United States denied on the ground that what the company was seeking to recover was, in substance, interest "and that Congress has denied to the Court of Claims power to allow." The court distinguished the cases of the *U. S.* v. *Sargent* and *U. S.* v. *Rogers* cited by Captain Hanssen on the ground that they were condemna-

[1] U. S. Counter-case, Appendix, page 256.

tion proceedings brought by the Government and also on the ground that in both of those cases the statute under which the property was condemned had provided that the condemnation should be conducted according to the laws of the State in which the land was situated—and under the law of the State interest was recoverable. The court in drawing a distinction between condemnation proceedings brought by the Government and a suit against the Government in the Court of Claims said:

"It may be that, even in the absence of the conformity provision referred to above, interest could be collected as a part of the just compensation in condemnation proceedings brought by the Government. For, as suggested in U. S. *v.* Sargent, supra, such a proceeding is not a suit by the landowner to collect a claim against the United States, but an adversary proceeding in which the owner is the defendant and which the Government institutes in order to secure title to land. * * * *On the other hand this suit brought in the Court of Claims is a very different proceeding. It is an action of contract to recover* money which the United States is assumed to have promised to pay; and the assumed promise was to pay the value at the time of the taking."

Attention is also invited to the opinion of the United States District Court for the District of Connecticut in the case of *Helen C. Maguire et al.* v. *United States*, dated December 7, 1921,[1] in which the court followed *United States* v. *North American Transportation & Trading Company*, and declined to allow interest as part of just compensation in a suit against the United States arising out of the requisitioning of property under "an Act to authorize the President to provide housing for war needs," approved May 26, 1918.

The cases cited by Captain Hanssen in his brief involved condemnation proceedings brought by the United States in the inferior federal courts within the limits of particular states. In such cases there is a federal statute expressly providing that,

"The practice * * shall conform as near as may be to the practice * * existing at the time in like causes of the courts of record of the State within which such circuit or district courts[2] are held." (25 Stat. 357.)

The effect of this provision is to read into the federal statutes the provisions of the State statutes relating to the subject of interest. Such State statutes in effect thereby become laws of the United States and of course are enforced precisely as though they were in fact

[1] This opinion has not yet appeared in the Federal Reporter.
[2] Federal courts.

statutes of the United States. The instant case could not be brought in any court of the United States sitting within the limits of a State. Whether such an action is brought in the Court of Claims or, as in the instant case, is, by consent of the parties, heard before an international tribunal, it is obvious that the above quoted federal statute does not apply.

The United States accordingly contends that Section 177 of the Judicial Code is applicable to the present case and that therefore interest may not properly be included in "just compensation."

H. THE CLAIM OF PAGE BROTHERS.

The claim of Page Brothers is set forth on pages 78–80 of the Case of the United States.

This claim is not referred to in the Norwegian Case. The Norwegian Counter-case makes no attempt to rebut the statement of this claim as presented in the Case of the United States, but contents itself with the statement that " for reasons to be stated in the printed argument, the validity of this claim is denied."

Under these circumstances, in the absence of any statement from the Kingdom of Norway concerning the claim of Page Brothers except this categorical denial of liability contained in the Norwegian Counter-case, the United States reserves any further comment upon this claim until the Kingdom of Norway has made a more definite statement concerning it.

I. CONCLUSION.

It has been found impossible to confine this argument within more restricted limits. Aside from certain general principles which apply alike to all the claims, we are really dealing with fifteen different cases, each to a large degree with its own peculiar facts. Each of these cases must be presented and presented fully, since this honorable Tribunal is called upon to "determine what sum if any shall be paid in settlement of *each* claim."

The necessity of presenting and analyzing the facts with reference to each of these claims is largely responsible for the length of this brief and the consequent burden imposed upon this honorable Tribunal.

All of which is respectfully submitted to this honorable Tribunal on behalf of the United States.

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